

**STATE OF MICHIGAN**  
**DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS**  
**OFFICE OF FINANCIAL AND INSURANCE REGULATION**  
**Before the Commissioner of Financial and Insurance Regulation**

**In the matter of**

**XXXXX**

**Petitioner**

**v**

**File No. 120097-001-SF**

**Blue Cross Blue Shield of Michigan**

**Respondent**

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**Issued and entered**  
**this 31st day of August 2011**  
**by R. Kevin Clinton**  
**Commissioner**

**ORDER**

**I. PROCEDURAL BACKGROUND**

On March 16, 2011, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Regulation under Public Act No. 495 of 2006, MCL 550.1951 *et seq.* The Commissioner reviewed the request and accepted it on March 23, 2011.

Under Section 2(2) of Act 495, MCL 550.1952(2), the Commissioner conducts this external review as though the Petitioner was a covered person under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.*

The Commissioner notified Blue Cross and Blue Shield of Michigan (BCBSM) of the external review and requested the information used in making its adverse determination. The Commissioner received BCBSM's response on March 29, 2011.

The issue in this external review can be decided by a contractual analysis. The Commissioner reviews contractual issues pursuant to MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

**II. FACTUAL BACKGROUND**

The Petitioner receives health care benefits through the XXXXX PPO Plan, a government self-funded group health care plan under Act 495 that is administered by BCBSM.

His prescription drug benefits are defined in the BCBSM *Preferred Rx Program Certificate* (the certificate).

The Petitioner has sensory loss in both feet due to nerve damage sustained during back surgery in 2003 and received samples of Metanx from his doctor. Metanx is a prescription medical food that provides the active forms of folate, vitamin B<sub>6</sub> and vitamin B<sub>12</sub> and is used to treat peripheral neuropathy, including numbness.

When the Petitioner asked BCBSM to cover the Metanx, his request was denied. The Petitioner appealed the denial through BCBSM's internal grievance process. BCBSM held a managerial-level conference on February 16, 2011, and issued a final adverse determination dated March 7, 2011, affirming its denial.

### **III. ISSUE**

Is BCBSM required to pre-authorize and cover the Petitioner's prescription for Metanx?

### **IV. ANALYSIS**

#### Petitioner's Argument

The Petitioner believes there is no cure for the neuropathy in his feet and it will only get worse, spreading in time from the bottoms of his feet up his legs.

The Petitioner's doctor states that Metanx helps maintain blood flow and promotes the restoration of damaged cutaneous nerve fibers. If blood flow is reduced, the nerves in the feet may have decreased sensation and thus sores or injuries may not be noticed, resulting in ulcerations or infections leading to more complex and expensive medical issues. The Petitioner states that since he has been using Metanx, feeling has been coming back to his toes.

The Petitioner argues that since Metanx has helped treat his neuropathy and requires a prescription, BCBSM should be required to cover it.

#### BCBSM's Argument

While BCBSM does not dispute the medical benefits of Metanx in treating and managing neuropathy, it argues that under the Petitioner's prescription drug plan, medical foods are not covered. BCBSM points to this provision in the certificate ("Section 3: Prescription Drugs Not Covered," pp. 3.1 - 3.2) which states:

We will not pay for the following:

\* \* \*

- Anything other than covered drugs and services

In “Section 4: General Conditions of Your Contract,” it further states (p. 4.1):

We do not pay for the following care and services:

\* \* \*

- Any services not listed in this certificate as being payable

BCBSM indicates that Metanx is not covered under the Petitioner’s prescription drug plan and therefore it was correct when it declined to cover it.

#### Commissioner’s Review

Under the certificate, only covered drugs and services are payable. Metanx, a medical food, is not a prescription drug and is not included on the XXXXX BCBSM formulary. It is shown on the formulary as a nonformulary product for which there are possible formulary alternatives. The possible formulary alternative for Metanx is folic acid.<sup>1</sup>

The State of Michigan plan, which is only administered by BCBSM, has chosen not to cover the prescription medical food Metanx. Because it is a government self-funded plan, the XXXXX plan is not required, as BCBSM is required to for its underwritten products, to provide exceptions to formulary limitations when medically necessary. See MCL 550.1401h.

The Commissioner concludes that BCBSM correctly applied the provisions of Petitioner’s coverage in denying coverage for Metanx.

#### **V. ORDER**

BCBSM’s final adverse determination of March 7, 2011, is upheld. BCBSM is not required to cover Metanx for the Petitioner.

This is a final decision of an administrative agency. Any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. See MCL 550.1915(1), made applicable by MCL 550.1952(2). A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

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R. Kevin Clinton  
Commissioner

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<sup>1</sup> There is no evidence in the record that the Petitioner was directed to the nonformulary alternative.