

STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES
Before the Director of Insurance and Financial Services

In the matter of:

██████████
Petitioner

v

File No. 144209-001-SF

██████████ County, Plan Sponsor
and
Blue Cross Blue Shield of Michigan, Plan Administrator
Respondents

Issued and entered
this 9th day of February 2015
by Randall S. Gregg
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

On January 8, 2015, ██████████, authorized representative of his wife ██████████ (Petitioner), filed a request for external review with the Department of Insurance and Financial Services, appealing a claim denial issued by Blue Cross Blue Shield of Michigan (BCBSM), the administrator of the Petitioner's health benefit plan. The plan is sponsored by ██████████ County, ██████████ employer.

The request for external review was filed under Public Act No. 495 of 2006, (Act 495) MCL 550.1951 *et seq.* Act 495 requires the Director to provide external reviews to a person covered by a self-funded health plan that is established or maintained by a state or local unit of government. The Director's review is performed "as though that person were a covered person under the Patient's Right to Independent Review Act" (MCL 550.1952). ██████████ County's health benefit plan is such a governmental self-funded plan. The plan's benefits are described in BCBSM's *Community Blue Group Benefits Certificate ASC*.

On January 15, 2015, after a preliminary review of the information submitted, the Director accepted the Petitioner's request and asked BCBSM to provide the information used to make its final adverse determination. BCBSM furnished its response on January 27, 2015.

To address the medical issues in the case, the Director assigned it to an independent medical review organization which provided its report and recommendation on January 29, 2015.

II. FACTUAL BACKGROUND

In March 2014, the Petitioner suffered an intra-cranial hemorrhage. She had surgery and subsequently developed numerous complications. She was in a skilled nursing facility, [REDACTED], for 60 days, from October 21 until December 19, 2014. A request was made for additional days of care at the facility but BCBSM denied coverage for the requested additional days.

The Petitioner's husband initiated an appeal of that decision through BCBSM's internal grievance process. At the conclusion of that process, BCBSM issued a final adverse determination dated December 23, 2014, affirming its decision. The Petitioner now seeks a review of that adverse determination from the Director.

III. ISSUE

Did BCBSM correctly deny coverage for the Petitioner's care in a skilled nursing facility after December 19, 2014?

IV. ANALYSIS

BCBSM's Argument

In its final adverse determination, BCBSM wrote to the Petitioner:

[Y]ou do not meet the medical criteria for coverage and your precertification remains denied.

You are covered under the *Community Blue Group Benefit Certificate ASC*. Page 19 of the *Certificate* states services provided in accordance with the terms of this certificate are covered only when they are medically necessary.

* * *

Pages 86 to 87 of the *Certificate* describes your skilled nursing care benefits:

Length of Stay

We pay only for the period that is necessary for the proper care and treatment of the patient up to a maximum of 120 days per member, per calendar year.

* * *

We do not pay for:

- Custodial care

* * *

In addition, our medical consultant reviewed the documentation submitted by Health Source Saginaw and determined:

You were in a skilled care facility for 60 days. Additional days were not approved by two BCBSM medical consultants. You

have appealed those decisions. Available for review are BCBSM case notes and records submitted by the facility. The records show that you have a complicated medical history which basically consists of brain damage as a result of bleeding in your brain in March 2014 and complications that occurred during treatment. The records also show that, despite skilled therapy, you are unable to walk or manage your daily care needs such as feeding, dressing and bathing. It was for this reason that the medical consultant did not approve additional days of skilled care. Unfortunately, the records that were made available on your appeal contain no additional information such as therapy or nursing notes that could be used to evaluate your claim for additional days of skilled care. It is for this reason, that your appeal has not been approved.

Because you do not meet the medical criteria, the precertification remains denied and December [20], 2014 remains your last covered day.

Petitioner's Argument

In the request for an external review, the Petitioner's authorized representative indicated that his wife has been making slow progress but still requires additional days of skilled care in order to recover from her illness. He believes that additional skilled care is medically necessary and should be a covered benefit.

Director's Review

To determine if it was medically necessary for the Petitioner to be in a skilled nursing facility after December 19, 2014, the Director presented the issue to an independent review organization (IRO) for analysis and a recommendation, as required by section 11(6) of the Patient's Right to Independent Review Act, MCL 550.1911(6).

The IRO reviewer is a physician in active practice who is certified by the American Board of Internal Medicine and is published in peer reviewed medical literature. The IRO reviewer's report included the following analysis and conclusion:

It is the determination of this reviewer that the skilled nursing facility services after December 20, 2014 were not medically necessary for the treatment of the enrollee's condition.

* * *

The enrollee suffered a devastating medical catastrophe. She had numerous complications. She was left in an extremely debilitated state with minimal improvement. The enrollee required total care, two person assistance from the bed, and total assistance with activities of daily living. According to the documentation submitted for review, the enrollee was receiving assistance at the

level of custodial care. As such, the enrollee was an appropriate candidate for return home with home assistance or long-term care placement. The enrollee did not qualify for continued provision of skilled nursing services due to failure to improve or progress, as clearly documented in the medical records as provided.

Recommendation:

It is the recommendation of this reviewer that the denial issued by Blue Cross Blue Shield of Michigan for the skilled nursing facility services after December 20, 2014 be upheld.

The Director is not required to accept the IRO's recommendation. *Ross v Blue Care Network of Michigan*, 480 Mich 153 (2008). However, the recommendation is afforded deference by the Director. In a decision to uphold or reverse an adverse determination, the Director must cite "the principal reason or reasons why the [Director] did not follow the assigned independent review organization's recommendation." MCL 550.1911(16)(b). The IRO's analysis is based on extensive experience, expertise, and professional judgment. Furthermore, it is not contrary to any provision of the Petitioner's certificate of coverage. MCL 550.1911(15).

The Director can discern no reason why the IRO's recommendation should be rejected in this case. The Director finds that skilled nursing facility care for the Petitioner after December 20, 2014, was not medically necessary and is therefore not a covered benefit under the certificate.

V. ORDER

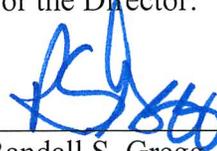
BCBSM's final adverse determination of December 23, 2014 is upheld.

This is a final decision of an administrative agency. Under MCL 550.1915, 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 Michigan county where the covered person resides or in the circuit court of Ingham County.

A copy of the petition for judicial review should be sent to the Department of Insurance and Financial Services, Office of General Counsel, Post Office Box 30220, Lansing, MI 48909-7720.

Annette E. Flood
Director

For the Director:



Randall S. Gregg
Special Deputy Director