

**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. 145634-001-SF**

**State of Michigan, Plan Sponsor**

**and**

**Blue Cross Blue Shield of Michigan, Plan Administrator**

**Respondents**

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**Issued and entered**  
**this 28<sup>th</sup> day of January 2015**  
**by Randall S. Gregg**  
**Special Deputy Director**

**ORDER**

**I. PROCEDURAL BACKGROUND**

On January 6, 2015, ██████████ (Petitioner) filed a request for external review with the Department of Insurance and Financial Services, appealing a claim denial issued by Blue Cross and Blue Shield of Michigan (BCBSM), the administrator of the Petitioner's health benefit plan which is sponsored by the State of Michigan. 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). The Petitioner's health benefit plan is such a governmental self-funded plan.

The plan's benefits are described in Michigan's *State Health Plan PPO for Medicare-eligible Retirees*. The Petitioner receives benefits as a dependent of his wife, a retired state employee. Both the Petitioner and his wife have primary coverage under Medicare Parts A and B. The State of Michigan plan provides secondary coverage.

On January 13, 2015, after a preliminary review of the information submitted, the Director accepted the Petitioner's request. The Director notified BCBSM of the appeal and asked BCBSM to provide the information used to make its final adverse determination. BCBSM furnished its initial response on January 23, 2015 and submitted additional information on January 26, 2015.

The issue in this external review can be decided by a contractual analysis. The Director 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

On July 5, 2012 the Petitioner purchased the zoster (shingles) vaccine for himself and his wife at a local pharmacy, [REDACTED] Drug Store in [REDACTED], [REDACTED]. The charge was \$199.99 for each vaccine. The vaccines were administered by a nurse in the office of their primary care physician in [REDACTED]. The Petitioner filed with BCBSM a claim for reimbursement for the cost of the vaccines. BCBSM issued payment in August 2012.

In a letter to the Petitioner dated November 16, 2012, BCBSM stated that its payment for the vaccine was issued in error. BCBSM requested that the Petitioner refund the \$199.99 payment for his vaccine.<sup>1</sup>

The Petitioner challenged BCBSM's request for repayment. BCBSM ultimately issued a final adverse determination on September 17, 2014 affirming its request for reimbursement. The Petitioner now seeks a review of that adverse determination from the Director.

## III. ISSUE

Can BCBSM seek reimbursement of its payment for the Petitioner's July 5, 2015 zoster immunization?

## IV. ANALYSIS

### BCBSM's Argument

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

I confirmed that the initial claim that was processed for [reimbursement] was done in error. According to our records, at the time you purchased the vaccine Medicare was your primary reimbursement. Therefore, the claim was adjusted correctly and the request for payment recovery is appropriate.

You are covered under the State of Michigan health plan. Page 10 of the *State Health Plan PPO for Medicare-eligible Retirees* states the following:

### **Coordinating Medicare and your supplemental coverage**

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1. BCBSM has never sought reimbursement of its payment for the Petitioner's wife's vaccine. BCBSM has confirmed that it does not intend to seek reimbursement of that payment. BCBSM has provided no explanation as to why the two claims have been treated differently.

When you enroll in Medicare, it becomes your primary coverage and will determine if the service rendered is a benefit and, if so, the approved amount for the service. When you enroll or become eligible for Medicare, the State Health Plan PPO is your secondary coverage that supplements Medicare and provides some services that may not be covered under Medicare Part A and Part B.

In this case, we received your reimbursement claim form for the zoster vaccination you purchased on July 5, 2012. However, a review of records confirmed at the time you purchased the vaccine Medicare was your primary carrier. As mentioned above, when you enroll in Medicare it becomes your primary coverage. As such, all claims must be submitted to Medicare first before BCBSM will make payment for your services. Therefore, because we did not receive Medicare's payment determination prior to processing your claim for reimbursement, the claim was adjusted and a request for recovery of payment was issued to you on November 16, 2012.

I understand that you were unaware that Medicare must process your claims prior to being submitted to BCBSM. However, under the terms and conditions of your State of Michigan Health Plan, your secondary only supplements your Medicare coverage. Thus, without Medicare's payment determination, we are unable to approve reimbursement for the vaccine you purchased, and the amount of \$199.99 is eligible for recovery of payment.

### Petitioner's Argument

The Petitioner included this statement with his request for an external review:

My wife and I received shingle shots. I called BCBSM and they said they were covered and to just send in the paid receipt, which I did and they reimbursed me. Now they want money back for my shot and not my wife's. Shots were purchased at the pharmacy but administered by a nurse, documentation I provided. They say I should have filed Medicare first but waited past the year to tell me....

### Director's Review

The Petitioner submitted his claims to BCBSM without first submitting the claims to Medicare which is the primary health insurer for he and his wife. The Petitioner's State of Michigan benefit plan requires that a claim be first submitted to Medicare before it can be considered by BCBSM, the State of Michigan plan's administrator. In the absence of a claim decision from Medicare, BCBSM is not obligated to provide coverage.

It is unfortunate that the Petitioner did not submit a claim to Medicare. Nevertheless, BCBSM's attempt to recover reimbursement for a claim paid in error is consistent with the terms and conditions of the *State Health Plan PPO for Medicare-eligible Retirees*.

**V. ORDER**

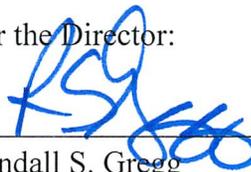
The Director upholds BCBSM's final adverse determination of September 17, 2014.

The parties should note that, under the Patient's Right to Independent Review Act, the Director's role is limited to determining whether an insurer has properly administered a health benefit according to the terms of the applicable contract and any relevant law. This decision should not be construed as an order that the Petitioner pay the reimbursement BCBSM is seeking. The Director has no authority under PRIRA to impose such a requirement on the Petitioner.

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 sixty 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:



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Randall S. Gregg  
Special Deputy Director