STATE OF MICHIGAN

DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES

Before the Director of Insurance and Financial Services

In the matter of:

[redacted]

Petitioner

v **File No. 145711-001-SF**

[redacted], Plan Sponsor

and

Blue Cross Blue Shield of Michigan, Plan Administrator

Respondents

Issued and entered
this 6th day of February 2015
by Randall S. Gregg
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

On January 8, 2015, [redacted], on behalf of her minor daughter [redacted] (Petitioner), filed a request with the Director of Insurance and Financial Services for an external review under Public Act No. 495 of 2006 (Act 495), MCL 550.1951 *et seq*. On January 15, 2015, after a preliminary review of the information submitted, the Director accepted the request.

The Petitioner receives health care benefits as a dependent through a plan sponsored by the [redacted] (the plan), a self-funded governmental health plan as defined in Act 495. Blue Cross Blue Shield of Michigan (BCBSM) administers the plan. The Director immediately notified BCBSM of the external review request and asked for the information it used to make its final adverse determination. The Director received BCBSM's response on January 27, 2015.

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

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1 [redacted]

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

II. Factual Background

The plan's benefits are described in the *Community Blue Group Benefits Certificate ASC*[2] (the certificate).

The Petitioner has been hospitalized in the past during the winter months because of respiratory problems. Her physician prescribed Synagis, a drug used to prevent respiratory syncytial virus (RSV) infections. BCBSM classifies Synagis as a specialty pharmaceutical that requires preauthorization (certificate, p. 74). When preauthorization was requested, BCBSM denied coverage, saying the Petitioner did not meet its criteria for use of the drug.

The Petitioner appealed the denial through BCBSM's internal grievance process. BCBSM held a managerial level conference and issued a final adverse determination dated December 31, 2014, upholding its decision. The Petitioner now seeks a review of that adverse determination from the Director.

III. Issue

Did BCBSM correctly deny coverage for Synagis?

IV. Analysis

Respondent's Argument

In its final adverse determination, BCBSM informed the Petitioner's mother:

> A Clinical Pharmacist reviewed your appeal, your health care plan benefits . . . and the medical documentation provided. Based on the review the following was determined:
>
> > The Medical Policy for Synagis does not provide coverage for patients greater than 2 years old. We have record you are greater than 2 years old.
>
> Therefore, because [the Petitioner] is older than two years of age, our denial of preauthorization must be maintained. If you choose to obtain the specialty drug, you will be responsible for the full cost.

Petitioner's Argument

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2 BCBSM form no. 457F, effective 07/14.

In his request for an external review the Petitioner's mother said:

> [The Petitioner] was designated by her pediatrician as a patient who should receive the Synagis injection as a protection against the RSV virus. She was denied because she is over the age of two (she is 6). The past two years she has been approved and has not been hospitalized. (She was in hospital for 10 days with RSV when she was 3.)
>
> I would like for her to be approved for the Synagis injection for the remainder of the 2015 RSV season.

Director's Review

The Petitioner is six years old. BCBSM says that according to its medication use policy, Synagis is not medically appropriate for patients that are older than two years.

To determine if Synagis is medically necessary for the Petitioner, the Director presented the issue to an independent review organization (IRO) for analysis, as required by section 11(6) of the Patient's Right to Independent Review Act, MCL 550.1911(6).

The IRO physician reviewer is certified by the American Board of Pediatrics, is published in the peer reviewed medical literature, and is in active clinical practice. The IRO report included the following analysis and recommendation:

> **Reviewer's Decision and Principal Reasons for the Decision:**
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> It is the determination of this reviewer that the medication Synagis is not medically necessary for the treatment of the enrollee's condition.
>
> **Clinical Rationale for the Decision:**
>
> * * *
>
> RSV [*respiratory syncytial virus*] causes acute respiratory tract illness in persons of all ages. Almost all children are infected by two years of age, and reinfection is common. Palivizumab (Synagis) is a humanized monoclonal antibody against the RSV F glycoprotein (which is highly conserved among various isolates). It is licensed for use in selected infants and children younger than twenty-four (24) months with BPD, preterm birth (less than 35 weeks), or hemodynamically significant congenital heart disease.
>
> * * *
>
> According to the documentation submitted for review, the enrollee does not have neuromuscular disease or congenital airways anomalies. The enrollee is not of the age under 24 months. The sum of the literature and guidelines demonstrates that there is no support for use of Synagis in this clinical scenario at the age of six (6).

> Based on the literature, there is no proven benefit to providing Synagis in a patient of this age, therefore, Synagis is not medically necessary for the enrollee.

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 experience, expertise, and professional judgment. In addition, the IRO's recommendation is not contrary to any provision of the Petitioner's certificate of coverage. MCL 550.1911(15).

The Director, discerning no reason to reject the IRO's recommendation, finds that Synagis is not medically necessary to treat the Petitioner's condition.

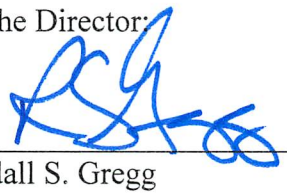
V. ORDER

The Director upholds BCBSM's final adverse determination of December 31, 2014.

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