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. 146214-001-SF**

[redacted], Plan Sponsor
and
Blue Cross Blue Shield of Michigan, Plan Administrator
Respondents

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

ORDER

I. PROCEDURAL BACKGROUND

On February 6, 2015, [redacted], authorized representative of her adult daughter [redacted] (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 which is sponsored by the [redacted].

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 BCBSM's *Community Blue Group Benefits Certificate ASC*.

On February 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 response on February 20, 2015.

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 February 27, 2015.

II. Factual Background

The Petitioner has a twelve year history of headaches. Her doctor suggested she be treated using "pulsed radiofrequency ablation surgery." BCBSM denied coverage for this proposed treatment, saying the surgery is experimental for treatment of the Petitioner's condition.

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 19, 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 radiofrequency ablation treatment?

IV. Analysis

Respondent's Argument

In its final adverse determination, BCBSM wrote:

> Procedure code 64999, Nervous System Surgery, Unlisted (pulsed radiofrequency ablation) was denied because this procedure is not a covered benefit under the terms of coverage. After an extensive review, I confirmed that the denial is appropriate and must be maintained. Your health care plan does not cover experimental services, which are often referred to as investigational services. Thus, we are unable to honor your request for coverage.
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> * * *
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> To ensure all consideration was given to you, a board-certified M. D. in General Surgery reviewed your claim, your appeal, and your health care plan benefits for [BCBSM]. Our medical consultant determined:
>
>> All submitted documentation reviewed. The doctor is requesting preauthorization to perform pulsed radiofrequency ablation treatment in the cervical area for treatment of headache. We are unable to approve that preauthorization at this time as it is noted in the [BCBSM] Medical Policy entitled "Facet Joint Denervation" that pulse radiofrequency treatment is considered investigational.

> According to the current BCBSM Medical Policy titled "Facet Joint Denervation", Page 2, pulsed radiofrequency denervation is considered experimental/investigational and has "not been scientifically demonstrated to improve patient clinical outcomes better than conventional treatment."
>
> You and your daughter are covered by the *Community Blue Benefits Certificate ASC. Section 6: General Conditions of Your Contract*, Page 132, explains that experimental treatment is not payable. Thus we must uphold our decision.
>
> During the conference, you expressed that the services should not be considered investigational due to your long-chronic history and therapy in the treatment of headaches. We considered this information along with the medical documentation provided and confirmed that we are unable to approve preauthorization. We are bound by the provisions of coverage. As explained above, this treatment has not been scientifically proven to improve clinical outcomes better than conventional forms of treatment.

Petitioner's Argument

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

> [Petitioner] has a 12 year history of severe chronic migraine headache debilitating in nature. [Her doctor] is recommending pulsed radio frequency ablation of C2 dorsal root ganglion due to 100% relief of pain obtained with diagnostic short-term nerve block. This would result in higher quality of life, much less pain and resulting complication, decreased medication use and accompanying deleterious side effects from such medication use, decreased ER visits, decreased work days lost.

In a letter dated November 21, 2014, the Petitioner's pain specialist, a physician at the [redacted], explained the need for pulsed radiofrequency ablation:

> [Petitioner] has been referred to me by the neurology team here at the [redacted] after she responded poorly to multiple modalities of conservative treatment, which includes medical management with medications, behavioral therapy and physical therapy. At the time of the exam, she was found to have a good cervicogenic component coming from cervicalgia, cervical 2 mediated pain and cervicogenic headache. She does not have radicular pain and has never had a cervical fusion. I recommended a C2 dorsal root ganglion block. The patient responded very well and had 100% relief of her pain and was found to be a good candidate for a pulsed radiofrequency ablation of C2 dorsal root ganglion. This procedure is considered to be medically

> necessary in her case because it will not only provide her with long-term pain relief regarding her cervicogenic component plus it will also decrease the number of visits she makes to [redacted]. The benefit of pulsed radiofrequency ablation over the standard radiofrequency ablation is that the patient has minimal risk of neuritis while we achieve the single results that we would achieve with standard radiofrequency ablation however with fewer complications.

Director's Review

To determine if radiofrequency ablation treatment is experimental/investigational for treatment of the Petitioner's condition, 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 reviewer is a physician in active practice who is certified by the American Board of Anesthesiology with a subspecialty in pain medicine. The IRO report included the following analysis and recommendation:

> Radiofrequency facet neurolysis is not likely to be more beneficial for treatment of the enrollee's medical condition. The majority of peer-reviewed literature supports the efficacy of radiofrequency neurolysis in the treatment of chronic spine pain due to facet pathology as long as the patients are appropriately selected. In reviewing the medical records, the enrollee did fail conservative therapy and physical therapy; however, MRI is not significant for cervical facet pathology. Additionally, the physical examination does not indicate facet medicated pain; in fact the physical examination was non-significant for pathological findings. Finally, the enrollee seems to be presenting with a complex demonstration of migraines that is not likely to respond to radiofrequency facet neurolysis; therefore, the requested service is not appropriate in treating the enrollee's medical condition.
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> * * *
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> The standard of care for treatment of the enrollee's condition includes anticonvulsant, antidepressants, and short term opioid medications targeting neuropathic pain also combined with a multi- disciplinary modality to include physical therapy and cognitive behavioral therapy.
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> The medical and scientific literature notes that the radiofrequency ablation has not been proven to be beneficial in the treatment of the enrollee's condition. Therefore, the radiofrequency ablation is considered experimental in the treatment of the enrollee's condition. [References omitted.]
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> Recommendation:
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> It is the recommendation of this reviewer that the denial issued by Blue Cross

Blue Shield of Michigan for the radiofrequency ablation treatment 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 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 radiofrequency ablation treatment is experimental/investigational for treatment of the Petitioner's condition.

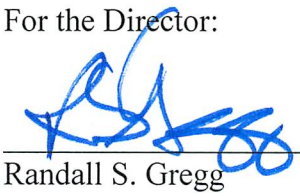
V. ORDER

The Director upholds BCBSM's final adverse determination of December 19, 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