

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. 146364-001

Blue Cross Blue Shield of Michigan,

Respondent.

Issued and entered
this 10th day of March 2015
by Randall S. Gregg
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

On February 18, 2015, ██████████, on behalf of her minor son ██████████ (Petitioner), filed a request with the Director of Insurance and Financial Services for external review under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* On February 25, 2015, after a preliminary review of the information submitted, the Director accepted the request.

The Petitioner receives health care benefits through a plan that is underwritten by Blue Cross Blue Shield of Michigan (BCBSM). The Director immediately notified BCBSM of the external review request and asked for the information it used to make its final adverse determination. BCBSM provided its response on March 2, 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

The Petitioner's health care benefits are defined in the *Comprehensive Health Care Copayment Certificate Series CMM 100*² (the certificate).

On March 18, 2014, the Petitioner injured his leg while engaged in motocross training in ██████████. He was transported by a rotary wing air ambulance to a hospital. The air ambulance provider does not participate with BCBSM.

¹ Born August 23, 1998.
² BCBSM form no. 4959, approved 10/12.

The provider billed \$35,786.00 for the transport. BCBSM's "approved amount"³ for the service was \$4,734.74 (\$3,498.40 for the air ambulance and \$1,236.34 for mileage) and it paid that amount to the provider. The Petitioner was left responsible out-of-pocket for the balance of \$31,051.26.

The Petitioner appealed BCBSM's payment decision through its internal grievance process. At the conclusion of that process, BCBSM issued a final adverse determination dated December 17, 2014, affirming its decision. The Petitioner now seeks a review of that adverse determination from the Director.

III. ISSUE

Did BCBSM correctly process the claim for the air ambulance transport?

IV. ANALYSIS

BCBSM's Argument

In its final adverse determination, BCBSM's representative explained to the Petitioner's mother:

. . . I confirmed that our payment determination is appropriate. A review of your son's claim confirmed that the provider . . . is a nonparticipating provider. Nonparticipating providers are not obligated to accept our approved amount as payment in full. In this case, the provider reported the total charges of \$35,786.00. However, BCBSM determined that the approved amount of \$4,734.74 is the maximum payment amount for your son's service. Therefore, additional payment cannot be made.

* * *

As explained in Section 4 (Page 4.2) of the *Certificate*, "We pay our approved amount . . . for the services you receive that are covered in this certificate. . . ."

* * *

I understand that you and your son did not have a choice in the selection of his provider and were unaware of the provider's participation status prior to your son receiving services. However, as referenced above, the provider is a nonparticipating provider and is not obligated to accept our approved amount as payment in full. Therefore, the maximum payment available has been made and additional reimbursement cannot be approved.

Petitioner's Argument

In a letter dated March 6, 2015, the Petitioner's mother explained her reasons for appealing BCBSM's determination:

³ The approved amount is the lower of the billed charge or BCBSM's maximum payment level for the covered service (certificate, p. 7.2).

. . . [M]y son . . . , who was out practicing, caught the edge of the track and hit a round hale bail [*sic*]. I seen it, I heard him yelling, I ran over there and he said his leg was broke. The medics at [the motocross track] came over and attended to him. There WAS NOT an ambulance available at the track at this time, because it had left to take another injured rider. So we waited and waited and waited. . . .

. . . Then the medics determined [my son] should be medi-vacked to the hospital. The medics called for the air ambulance service. . . .

This was our first ever experience with an air ambulance situation. The medics made the determination to call for the air ambulance. I knew we had health Insurance that we paid real good money for; and I was figuring a cost of around \$10,000.00. Never, ever did it cross our minds that the air ambulance service would be \$35,786.00!!!

* * *

At the time of this emergency, we were not asking the medics and air ambulance company if they were "in network" or "participating." We were praying with our son!

* * *

In summary, my son was at the mercy of the medical people. The medical staff was making the decisions. The medical staff called for the air ambulance service. We were in a vulnerable situation, in a different state, far away from home. No one told us the cost of this air ambulance service.

The Petitioner's mother wants BCBSM to reprocess the claim and either pay it in full or negotiate a lower charge with the air ambulance provider.

Director's Review

There is no dispute in this case that air ambulance transport was medically necessary and that the Petitioner met the criteria of the certificate. The sole issue is how much BCBSM must pay for that service under the terms of the certificate.

The certificate (p. 4.27) says that BCBSM pays its "approved amount" for covered services. There is nothing in the certificate (or in state law) that requires BCBSM to pay more than its approved amount, even in an emergency or even if there are no participating providers available.

BCBSM determined that its maximum payment level for the Petitioner's air ambulance transport and mileage was \$4,734.74. Because that amount is less than the provider's charge, it became BCBSM's "approved amount." It is the same amount BCBSM would have paid a participating provider for this service.

The provider in this case does not participate with BCBSM or with a local Blue Cross or Blue Shield plan. The certificate (p. 7.18) says nonparticipating providers are "physicians and other health care professionals, hospitals and other facilities or programs that have not signed a participation agreement with BCBSM to accept the approved amount as payment in full" (certificate, p. 7). Because the air ambu-

lance provider has not agreed to accept BCBSM's approved amount as payment in full, it can balance bill the Petitioner. The certificate does not require BCBSM to pay a nonparticipating provider's charge in full under any circumstances.

The certificate (p. 4.28) notes the consequences of using a nonparticipating provider

NOTE: Because non-participating providers often charge more than our approved amount, our payment . . . may be less than the amount charged by the provider.

It is unfortunate that the Petitioner was unable to use a participating provider for his air transport. As his mother points out, she had no real choice in the selection of a provider; a participating provider may not even have been available. Further, as the Petitioner's mother notes, in an emergency attention is not focused on the participation status of the provider or the cost of a service but rather, as in this case, the medical well-being of the Petitioner. Nevertheless, the Director concludes that BCBSM correctly processed the claims for the air ambulance service under the terms and conditions of the certificate.

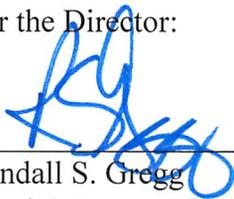
V. ORDER

The Director upholds BCBSM's final adverse determination of December 17, 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