

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

In the matter of:

██

Petitioners

v

File No. 146715-001

Blue Cross Blue Shield of Michigan

Respondent

Issued and entered
this 31st day of March 2015
by Joseph Garcia
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

On March 9, 2015, ██████████, for herself and on behalf of her minor daughter ██████████ (Petitioners), filed a request with the Director of Insurance and Financial Services for an external review under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* After a preliminary review of the materials submitted, the Director accepted the request on March 16, 2015.

The Petitioners receive health care benefits through an individual plan underwritten by Blue Cross Blue Shield of Michigan (BCBSM), a mutual insurance company. ██████████ is the subscriber and ██████████ is a dependent. The Director 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 March 25, 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 Petitioners' benefits are defined in the BCBSM Blue Cross Premier Silver Benefits Certificate¹ (the certificate).

¹ BCBSM form no. 603F, federal approval 09/13, state approval 08/14.

Between October 11 and November 25, 2014, the Petitioners received various treatment from [REDACTED] Chiropractic PC ([REDACTED]) and [REDACTED] Chiropractic PC ([REDACTED]). BCBSM covered the chiropractic services (an office visit, CPT code 99201; mechanical traction, CPT code 97012; and chiropractic manipulation, CPT code 98941) but denied coverage for these services:

- hot or cold packs therapy (CPT code 97010);
- massage therapy (CPT code 97124);
- manual therapy techniques (CPT code 97140);
- therapeutic exercises (CPT code 97110); and
- neuromuscular reeducation (CPT code 97112).

The Petitioners appealed the BCBSM's denial through its internal grievance process. BCBSM conducted a managerial level conference on December 17, 2014, and then issued a final adverse determination dated January 9, 2015, affirming its decision. The Petitioners now seek a review of that adverse determination from the Director.

III. ISSUE

Did BCBSM correctly deny coverage for the services the Petitioners received from October 11 through November 25, 2014?

IV. ANALYSIS

Petitioners' Argument

In a letter to BCBSM dated December 3, 2014, submitted with the request for an external review, the Petitioners said:

I would first of all request that you please pull up the recorded conversation that took place on October 8 2014. In this conversation you will note that I . . . the policy holder on this account spoke with Shauna regarding whether or not my new policy (changed due to the Affordable Healthcare Act) covered the following Procedure Codes

98940

98941

97124

99212

I talked to [REDACTED] at [REDACTED] Chiropractic Clinic so that I could call BCBS and check to see if these would be covered. [REDACTED] checked into all of these codes and told me the following: All these codes would be covered by my health plan (after my deductible that she said I had met), and that each person would receive 30 visits per year for the code 97124. I also specifically asked if [REDACTED] was listed as being accepted and she assured me yes.

I then asked her to check again - it has been in my experience to ask not once, but at least twice regarding anything that might cause me to pay additional money down the line. She then put me on hold and when she returned she confirmed what she had previously told me regarding procedure code 97124.

After this conversation I scheduled appointments for myself . . . and my daughter, confident in the information that was provided to me by [REDACTED] and so glad that I had done my due diligence by checking prior to having any of the above mentioned procedures done. I wish that I had, in retrospect, recorded the conversation as I was contacted by my Dr.'s that the procedure was not in fact being covered by BCBS. This is what is listed in my explanation of benefits (and yes my health care provider is asking me to pay).

Once this was brought to my attention I contacted BCBS of MI again and had a conversation with [REDACTED] on 11-26-2014. I would again request you to pull the conversation that [REDACTED] and myself had regarding Procedure Code 97124. During the conversation I asked about the notes that were placed on file after my conversation with [REDACTED]. As a person who has worked in the Customer Service Field for many years, I was quite dismayed at the lack of detail that was listed on my file for 10-8-2014. That is why I have asked you to pull up the recorded conversations for both of these dates.

I can tell you that if I had been given the correct information when I initially called on October 8 2014 that I would not have this issue with my Dr.'s and having them getting properly compensated. I did everything that BCBS instructs an enrollee to do - if you have questions as to whether or not something is covered to call and request that specific information - and that is specifically what I did. I even got the procedure codes from my Dr. so that I could make sure in my conversation with [REDACTED]. [REDACTED], who is also listed on my Explanation of Benefits also billed for the exact procedure code that [REDACTED] did - I asked them if they were approved by BCBS and what procedure codes they used in billing. They told me that yes they were approved by BCBS and they showed that they used the same procedure code. There would be no reason for me to believe that they would not be covered, since what would be billed would be the same as [REDACTED] and they were doing the exact same procedure.

* * *

After you have reviewed my file and listened to conversations (dated October 8 2014 and November 26 2014) I respectfully request you rule in my favor on this appeal for all visits regarding procedure code 97124. . . .

BCBSM’s Argument

In its final adverse determination, BCBSM’s representative said:

. . . Based on my review, I confirmed the payment determinations for you . . . and your daughter are correct. . . .

Page 71 of your Certificate details physical therapy services given by the approved providers in the locations listed below:

Locations	Providers
<ul style="list-style-type: none"> • A hospital, inpatient or outpatient • A skilled nursing facility • A freestanding outpatient physical therapy facility • A provider's office • A member’s home • A nursing home if it is the member’s primary residence 	<ul style="list-style-type: none"> • A doctor (M.D., D.O. or a podiatrist) • A dentist or optometrist • A chiropractor doing mechanical traction • A physical therapist, physical therapist assistant, or athletic trainer • A physician's assistant • A certified nurse practitioner

According to your *Certificate*, the only physical therapy service that a chiropractor is approved to perform is mechanical traction. You . . . and your daughter received the following physical services by a chiropractor:

- Hot or cold packs therapy (procedure code 97010)
- Massage therapy, each 15 minutes (procedure code 97124)
- Manual therapy techniques, 1 or more regions, each 15 minutes (procedure code 97140)
- Therapeutic exercises, each 15 minutes (procedure code 97110)
- Neuromuscular reeducation, each 15 minutes (procedure code 91112)

The physical therapy services received are not considered mechanical traction and were performed by [REDACTED], [REDACTED] and [REDACTED], who are chiropractors. Therefore, no payment is available.

I contacted [REDACTED] office and spoke with . . . the office manager. She informed me that you will not be billed for the massage therapy (procedure

code 97124) services you and your daughter received because we have determined that neither BCBSM or your family are liable.

I also contacted [REDACTED] office and spoke with . . . the office manager. She informed me that they will not bill . . . at this time for the massage therapy (procedure code 97124) services, because we have determined that neither BCBSM or your family are liable.

However, you and your family remain liable for the other non-covered services you and your family received. The non-covered procedure codes are: 97010, 97140, 97110, and 97112. These services are not covered because chiropractors are not payable providers for these physical therapy services. The amount owed for these services are in addition to your family's coinsurance and copayment responsibilities.

* * *

While I regret you feel you have received incorrect or misleading information from a BCBSM customer service representative, as a Grievance and Appeals coordinator for BCBSM, it is my responsibility to ensure that the claims at issue processed according to Plan Design. As a result I am not able to make an exception on your family's behalf.

Director's Review

The Petitioners (one or both) received hot or cold pack therapy (CPT code 97010); massage therapy (CPT code 97124); manual therapy techniques (CPT code 97140); therapeutic exercises (CPT code 97110); and neuromuscular reeducation (CPT code 97112). Those services are considered to be physical therapy and they were billed by chiropractors. But according to the certificate (p. 71), physical therapy must be given by "approved providers" and the only physical therapy shown that a chiropractor is approved to render is mechanical traction, which the Petitioners did not have. Therefore, the Director concludes that BCBSM correctly denied the claims for physical therapy billed by [REDACTED] and [REDACTED].

The Petitioners say they contacted BCBSM's customer service by telephone on October 8, 2014, to inquire about whether specific services would be covered; a recording of that telephone call was furnished by the Petitioners.

In that telephone call, BCBSM was asked if these four CPT codes would be covered services under the Petitioners' plan: 98940, 98941, 97124, and 99212. The Petitioners were told that all four would be covered, including the massage therapy (CPT code 97124) which the Petitioners received.² No inquiry was made about other CPT codes that were denied by BCBSM in this case (97010, 97140, 97110, and 97112).

² Massage therapy appears to be excluded from coverage in the certificate (see p. 137).

BCBSM's representative asked for the name of the doctor who would be billing for the services and was told it was a chiropractor. It was reasonable for the Petitioners to conclude that a chiropractor could perform CPT code 97124.

It was not until the Petitioners called BCBSM again on November 26, 2014, that it was explained that while all certain CPT codes were payable under the Petitioners' plan, not all those codes would be covered when performed by a chiropractor.

While it is unfortunate that the Petitioners may have received misleading information about the massage therapy benefit, the Director must uphold BCBSM's decision in this case. The Director does not have the authority in this review under the Patient's Right to Independent Review Act to change the Petitioners' coverage because of incorrect information received from BCBSM. The Director can only determine if BCBSM correctly administered benefits according to the terms and conditions of the certificate, and the Director finds that it did.

BCBSM is not required to cover the Petitioners' hot or cold pack therapy (CPT code 97010); massage therapy (CPT code 97124); manual therapy techniques (CPT code 97140); therapeutic exercises (CPT code 97110); or neuromuscular reeducation (CPT code 97112) when provided by a chiropractor.

V. ORDER

The Director upholds Blue Cross Blue Shield of Michigan's final adverse determination of January 9, 2015.

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 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, P.O. Box 30220, Lansing, MI 48909-7720.

Annette E. Flood
Director

For the Director



Joseph Garcia
Special Deputy Director