

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

In the matter of:

██████████
Petitioner

v

Blue Cross Blue Shield of Michigan
Respondent

File No. 148308-001

Issued and entered
this 7th day of July 2015
by Randall S. Gregg
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

On June 12, 2015, ██████████ authorized representative of her husband ██████████ (Petitioner), 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 material submitted, the Director accepted the request on June 19, 2015.

The Petitioner receives prescription drug benefits through a plan underwritten by Blue Cross Blue Shield of Michigan (BCBSM). The prescription drug benefits are defined in BCBSM's *Preferred Rx Program Certificate LG* and a related rider.

The Director notified BCBSM of the request for review and asked for the information used to make its final adverse determination. BCBSM provided its response on June 25, 2015.

The issue in this external review can be decided by a contractual review. 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 prescription drug coverage with BCBSM became effective on February 23, 2015. Before that date his drug coverage was provided by ██████████. His drug coverage changed as a result of his change in employer from ██████████ to ██████████

On February 27, 2015, the Petitioner filled a prescription for the drug Androgel at his local

pharmacy. The amount charged was \$500.91. The Petitioner paid the \$500.91 and requested reimbursement from BCBSM.

BCBSM denied the request. The Petitioner appealed the denial through BCBSM's internal grievance process. At the conclusion of the process BCBSM affirmed its denial and issued a final adverse determination dated June 2, 2015. The Petitioner then sought a review of that determination by the Director.

III. ISSUE

Is BCBSM required to provide payment for the Petitioner's February 27, 2015 Androgel prescription?

IV. ANALYSIS

Petitioner's Argument

The Petitioner stated in a June 12, 2015 letter filed with the request for an external review:

- Androgel prescription was approved by BCBS under my [previous group plan]. On 2/27/2015, I picked up a refill of that prescription
- My current group coverage became effective on 2/23/2015 through [REDACTED]
- I did not know at the time of the refill that the authorization does not transfer
- We needed to travel to [REDACTED] and departed the next day, on 2/28/2015. (Our son was diagnosed with a brain tumor and required surgery on 3/10. We returned on 3/15)
- I did not yet have my new insurance card when I picked up my refill on 2/27 (four days after Effective date of coverage of 2/23) so, in an effort not to complicate things, I paid out-of-pocket with the intention of submitting for reimbursement after my return from [REDACTED] and receiving my new insurance information.
- I refilled a second 20-day supply on March 24, 2015 and paid out-of-pocket.
- When we submitted for reimbursement of both scripts, we were advised that it was rejected by BCBS...because, based on BCBS Custom Drug List benefit criteria, the medication prescribed is contraindicated for the patient due to history of prostate cancer.
- My physician then submitted documentation to support his decision to prescribe this medication despite my history of prostate cancer and the decision was reversed
- We were advised that the authorization can be retroactive but not to 2/27/2015 refill

- I have been reimbursed for the 3/24 prescription and appeal to you for payment of the 2/27/15 refill as this has been an issue of timing, circumstances and communication issues beyond my control.

Respondent's Argument

In the final adverse determination to the Petitioner, BCBSM's representative wrote:

Androgel requires preauthorization be obtained prior to the purchase of the prescription drug. Thus the cost of the drug, \$500.91, remains your responsibility.

You are covered under the Preferred RX program Certificate LG. Your certificate is amended by Rider PD-TTC \$10/\$40/\$80-RXCM LG Prescription D Triple-Tier Copayment with a cost Management Program. According to Page 5 of your Rider:

Mandatory Preauthorization

Certain drugs require preauthorization. We will pay each drug, each refill of a drug, and select over-the-counter (OTC) drugs prescribed by a physician, as follows:

When preauthorization of a prescription of a prescription drug is required, authorization must be obtained from BCBSM before we will consider them for payment. If the required preauthorization is not requested or approval is not obtained, we deny payment and you will be responsible for 100 percent of the pharmacy's charge.

* * *

As explained on Page 1 of this letter, BCBSM requires that preauthorization be obtained prior to the purchase of a prescription drug that requires preauthorization. According to our records, there is no preauthorization request or approval on file for your current coverage ([REDACTED]) for the purchase of Androgel on February 27, 2015. Thus, the claim was denied appropriately.

Also according to our records, you purchased Androgel on March 24, 2014. After your purchase, a request for preauthorization was submitted. Preauthorization was approved effective April 22, 2015 to April 22, 2017, providing that your current policy is maintained. On May 1, 2015 a preauthorized backdate request was approved for the purchase of Androgel on March 24, 2015.

We understand you feel that because you received preauthorization for prescription drug, Androgel while you had previous coverage through BCBSM that the claim for the purchase of Androgel on February 27, 2015 should be approved. However, preauthorization is based on active coverage and is only valid while coverage is maintained. Therefore, I am unable to make an exception on your behalf and you remain liable for \$500.91.

Director's Review

The prior authorization upon which the Petitioner relies was issued by a different insurer [REDACTED] than the Petitioner's present insurer (BCBSM). There is no evidence that the two insurers have the same standards for approval. For that reason BCBSM is not required to honor the authorization provided by a different insurer.

BCBSM, the present insurer, has its own established standards for authorizing drug coverage. BCBSM's standards for coverage of Androgel are found in its "Prior Authorization and Step Therapy Guidelines" on page 6:

Male members who have a diagnosis of androgen deficiency confirmed by:

1. Two morning testosterone levels in the past year below normal range.
2. At least two signs or symptoms specific to testosterone deficiency.

Initial authorization: 1 year. Renewal criteria:

1. Testosterone levels area at or below normal range.
2. Improvement in signs or symptoms specific to testosterone deficiency.

While it appears that the Petitioner does meet those standards, his policy requires that he (or his doctor) request authorization for coverage before coverage will be provided. As there was no approved authorization on file with BCBSM at the time of the February 27, 2015 refill, BCBSM's denial of reimbursement was consistent with the terms of the certificate and rider in effect at the time.

V. ORDER

The Director upholds BCBSM's June 2, 2015 final adverse determination.

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, Post Office Box 30220, Lansing, MI 48909-7720.

Patrick M. McPharlin
Director

For the Director:



Randall S. Gregg
Special Deputy Director