

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. 148350-001-SF

State of Michigan, Plan Sponsor,

and

Blue Cross Blue Shield of Michigan, Plan Administrator,

Respondents.

Issued and entered
this 9th day of July 2015
by Randall S. Gregg
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

On June 16, 2015, ██████████ (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.*

The Petitioner seeks a review of a denial of a health care benefit. He has group health coverage through a plan sponsored by the State of Michigan, 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 June 30, 2015.

Section 2(2) of Act 495, MCL 550.1952(2), authorizes 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.*

This case presents an issue of contractual interpretation. The Director reviews contractual issues pursuant to MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

The Petitioner has primary health care coverage through Medicare. He has secondary coverage through the State of Michigan's health benefit plan, the State Health Plan (the plan). The Plan benefits are described in a booklet called *Your Benefit Guide: State Health Plan PPO Medicare-eligible Retirees* (the benefit guide). The benefit guide was effective on October 1, 2014.

The benefit guide (p.5) explains the coordination between the primary and secondary coverage:

When you enroll in Medicare, it becomes your primary coverage and will determine if the service rendered is a benefit, and if so, the approved amount for that service. The State Health Plan PPO is your secondary coverage, and provides benefits that may not be covered under Medicare Part A or Part B. In these instances, the State Health Plan PPO becomes your primary coverage. . . .

On December 18, 2014, the Petitioner ordered a second pair of removable shoe inserts (HCPCS code L3000, "foot, insert, removable, molded to patient, 'UCB' type, Berkeley shell, each"). The charge for these two orthotic devices was \$400.00. BCBSM denied coverage.

The Petitioner appealed the denial through the plan's internal grievance process. BCBSM held a managerial-level conference and at the conclusion of the process issued a final adverse determination dated June 3, 2015, upholding its decision. The Petitioner now seeks a review of that final adverse determination from the Director.

III. ISSUE

Is BCBSM required to provide coverage for the Petitioner's second pair of orthotics?

IV. ANALYSIS

Petitioner's Argument

On the request for external review form the Petitioner wrote:

Called and talked to two BCBSM representatives about obtaining a second pair of orthotics both on Sept. 24th, 2014 and on December 18, 2014. Both times we were told that I was allowed two pair of orthotics each year. My doctor told me to confirm this coverage, so I did twice. The second representative . . . told me because my deductible was met for 2014 that there would be no out of pocket cost to me on the second pair of orthotics.

BCBSM's Argument

In the final adverse determination, BCBSM told the Petitioner:

You are covered under the State of Michigan health care plan. As explained on Page 12 of the *Your Benefit Guide State Health Plan PPO Medicare-eligible Retirees*, benefits are

You are covered under the State of Michigan health care plan. As explained on Page 12 of the *Your Benefit Guide State Health Plan PPO Medicare-eligible Retirees*, benefits are provided for prosthetic and orthotic supplies. However, the plan's *Benefit Package Report (BPR)*, which is the online tool used by [BCBSM] to house procedure specific benefit information for your plan, indicates a quantity limitation. According to the *BPR*, you may receive two (2) units per calendar year.

Our records show that BCBSM paid 100% of its approved amount for two (2) foot inserts purchased on October 8, 2014. As such, the units purchased on December 18, 2014 exceed your contractual maximum for this supply. Therefore, payment for the additional two (2) units is unavailable, and you remain liable for the non-covered charge of \$400.00.

During your managerial-level conference you stated that a BCBSM customer service representative provided you misleading information regarding coverage of foot inserts under your health care plan. While I regret you believe you were given misleading information, as a Grievance and Appeals Coordinator for BCBSM, it is my responsibility to ensure that the claim at issue processed according to Plan Design. As a result, I cannot make an exception on your behalf. You remain responsible for the non-covered charge of \$400.00.

Director's Review

The plan covers "durable medical equipment; prosthetic and orthotic, and medical supplies" as a supplemental benefit at 100% when obtained from a participating provider (benefit guide, p. 12). However, there are some limitations that apply that are not apparent in the benefit guide.

According to BCBSM, the plan's benefits are explained in more detail in a document called the "Benefit Package Report" or BPR. The BPR says that "shoe inserts" are payable up to two "units" per calendar year (a unit is one insert). The notes from the plan's managerial-level grievance conference on May 14, 2015, perhaps explain the misunderstanding about the orthotic benefits:

The member . . . explained that he made the first call to BCBSM customer service on September 24, 2014 and was advised that his plan covered "two pairs."

The second call was made on October 18, 2014 at the advice of his provider. He was again told "two pairs."

The third call was made on April 28, 2014 (after the rejection) and he was then informed that his plan covered "two units" as in a left or a right, not "two pairs."

The member . . . explained that his understanding was two pairs (a left and a right together) were covered, and he would not have ordered another pair if he knew they were not covered.

The Petitioner does not have direct access to the BPR, and the benefit guide does not indicate any limitations on the orthotics benefit. When he called BCBSM customer service he may have received the wrong information.

However, even if it is true that the Petitioner received misinformation and relied on it to detriment,¹ the Director does not have the authority under the Patient's Right to Independent Review Act to alter the terms of the Petitioner's coverage because of incorrect information from a customer service representative. The Director can only determine if BCBSM administered benefits according to the terms and conditions of coverage.

The Petitioner's plan covers two "units" of shoe inserts per calendar year. It is undisputed that the Petitioner received a pair of orthotics (two units) in October 2014 that were covered by BCBSM. Therefore, he would not be eligible for a second pair (or even a single unit) until January 1, 2015, in the new calendar year.

The Director concludes and finds that BCBSM correctly denied coverage for the orthotics the Petitioner ordered on December 18, 2014, under the terms and conditions of the his coverage.

V. ORDER

The Director upholds BCBSM's final adverse determination dated June 3, 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 sixty 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.

Patrick M. McPharlin
Director

For the Director:



Randall S. Gregg
Special Deputy Director

¹ The record does not contain specific information about the telephone calls so the Director does not know with any certainty what questions were asked or how those questions were answered.