

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. 148816-001-SF

██████████ **Plan Sponsor,**

and

Blue Cross Blue Shield of Michigan, Plan Administrator,

Respondents.

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

ORDER

I. PROCEDURAL BACKGROUND

On July 15, 2015, ██████████ authorized representative of his grandson ██████████ (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.* On July 22, 2015, after a preliminary review of the information submitted, the Director accepted the request.

The Petitioner receives health care benefits as a dependent through a group health plan sponsored by the ██████████ (the plan), a governmental self-funded 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 July 28, 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 involves a contractual issue. 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 BCBSM's *Professional Services Group Benefit Certificate*¹ (the certificate).

On August 2, 2013, the Petitioner, then [REDACTED] years old, was seriously injured in an automobile accident in [REDACTED] while driving a car owned and insured by his grandfather, [REDACTED]. He was taken by air ambulance to a hospital in [REDACTED] [REDACTED] for treatment. The air ambulance provider charged \$20,747.27 for the transport.

According to the certificate (p. 2.2), the plan pays its "approved amount" for covered services like air ambulance transport.² "Approved amount" is defined in the certificate (p. 4.1) as

[t]he lower of the billed charge or our maximum payment level for the covered service. Copayments and/or deductibles, which may be required of you, are subtracted from the approved amount before we make our payment.

BCBSM, acting for the plan, determined that the maximum payment level for the air ambulance transport was \$5,312.70. Since that amount was lower than the provider's charge of \$20,747.27, it became the plan's approved amount. BCBSM then paid the ambulance provider \$2,812.70 (\$5,312.70 minus \$2,500.00 that [REDACTED] automobile insurance carrier had already paid). This left an unpaid balance of \$15,434.57 owed to the ambulance provider.

In March 2015 the Petitioner received a request from a debt collector for payment of \$16,799.57 owed to the air ambulance provider (the unpaid balance of \$15,434.57 plus \$1,365.00 in interest). He requested a review through the plan's internal grievance process. At the conclusion of that process, BCBSM issued the plan's final adverse determination dated June 1, 2015, upholding its decision on the air ambulance claim. The Petitioner now seeks a review of that final adverse determination from the Director.

III. ISSUE

Did BCBSM correctly process the claim for the Petitioner's air ambulance transport?

1 BCBSM form no. 1879, approved 10/12.

2 Air ambulance transport is a covered benefit (certificate, pp. 2.8 – 2.9) and there is no dispute about the medical necessity of the transport.

IV. ANALYSIS

Petitioner's Argument

The Petitioner believes the plan should pay more than its approved amount for his air ambulance transport under the circumstances. In a June 28, 2015, letter filed with the request for an external review, the Petitioner's authorized representative said:

I wish to appeal the decision by [BCBSM] in regards to not covering the remaining Air Transportation expense incurred as a result of an automobile accident that occurred on 8/2/13. . . .

The responding Police officer made the determination to use Air Transportation instead of ground transport due to the severity of [the Petitioner's] injury at the scene of the accident and he believed [the Petitioner] may become a fatality if not taken quickly to the hospital via helicopter. The Police officer had knowledge the hospital that [the Petitioner] would be taken to was very well equipped to give [the Petitioner] immediate care. As indicated in the attached letter [he] had a broken neck and was in a coma for 3 days. . . . If [the Petitioner's] condition [had] been not so severe as they were, I am sure the Police Officer would have had him transported to the same hospital as the passenger by ground transportation. Had the Officer not used his experience and had [the Petitioner] transported to the hospital by ground transportation, there is a strong possibility [he] would not be alive today.

Please consider these reasons as why I believe the remaining air transportation cost should be paid by my insurance.

BCBSM's Argument

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

. . . After review, I confirm the claim for air ambulance services processed correctly. Payment of covered services is based on the approved amount less any copayment and/or coinsurance and deductible which may be required.

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 charges totaling \$20, 747.27. However, the local Blue Cross Blue Shield plan determined the approved amount of \$5,312.70 (amount paid to you was \$2,812.70 less the \$2,500 paid [by] State Auto Insurance) is the maximum payment amount for the service. Therefore, no additional payment can be approved. The remaining balance of \$15, 434.57 remains a matter between you and [the provider]. . . .

* * *

In addition, in Section 4, page 4.12 of the certificate it explains nonparticipating providers are physicians and other health care professionals, hospitals and other facilities or programs that have not signed a participating agreement with the local Blue Cross Blue Shield Plan to accept our approved amount as payment in full. Because nonparticipating providers often charge more than the approved amount, the payment to you may be less than the amount charged by the nonparticipating provider.

Director's Review

After review, the Director concludes that BCBSM correctly established the plan's approved amount for the air ambulance transport as \$5,312.70 under the terms and conditions of the certificate. There is nothing in the certificate that requires the plan to pay more than its approved amount for a covered service, even in an emergency where the Petitioner had no choice in selecting the provider.

Unfortunately, the air ambulance provider is a nonparticipating provider, i.e., it has "not signed a participation agreement with BCBSM to accept the approved amount as payment in full." The certificate (p. 2.32) has this warning: "Because nonparticipating providers often charge more than our maximum payment level, our payment may be less than the amount charged by the provider." Consequently, the air ambulance provider may bill the Petitioner for any balance remaining after the plan makes its payment; the Petitioner may be responsible for the balance of the provider's charge.

The Director, however, does dispute the amount the plan actually paid for the air ambulance transport. Instead of paying \$5,312.70, the full approved amount, BCBSM subtracted the \$2,500.00 that [REDACTED] automobile insurance carrier paid for the air ambulance service. That offset was presumably made under Michigan's Coordination of Benefits Act, MCL 550.251 *et seq.* But that act applies to coordination between group disability (health) plans, not between a group disability plan and an automobile insurer. See MCL 550.253(1). The certificate (p. 3.2) acknowledges this:

To the extent that the services covered under this certificate are also covered and payable under another group health care plan, we will combine our payment with that of the other plan to pay the maximum amount we would routinely pay for the covered services. [Underlining added]

The Director concludes that the Coordination of Benefits Act is not applicable under the facts of this case. Furthermore, the Director found nothing else in the certificate, including the subrogation provision, which would permit the plan to offset the automobile insurance carrier's

payment. As a result, the Director finds that the plan must pay \$2,500.00 to either the provider or the Petitioner in order to complete payment of its approved amount.

V. ORDER

The Director reverses in part BCBSM's final adverse determination of June 30, 2015. The plan shall immediately pay \$2,500.00 to the Petitioner or the air ambulance provider to complete payment of its approved amount for the covered service. The plan shall, within seven days of making the payment, furnish the Director with proof it has implemented this Order.

To enforce this Order, the Petitioner may report any complaint regarding its implementation to the Department of Insurance and Financial Services, Health Care Appeals Section, at this toll free number: (877) 999-6442.

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