

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. 149251-001-SF

Western Michigan University, Plan Sponsor,

and

Blue Cross Blue Shield of Michigan, Plan Administrator,

Respondents.

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Issued and entered  
this 26<sup>th</sup> day of August 2015  
by Randall S. Gregg  
Special Deputy Director

**ORDER**

**I. PROCEDURAL BACKGROUND**

████████████████████ (Petitioner) was denied coverage for an item of durable medical equipment by his health plan. On August 6, 2015, ██████████, the Petitioner's mother and authorized representative, filed a request with the Director of Insurance and Financial Services for an external review of that denial under Public Act No. 495 of 2006, (Act 495) MCL 550.1951 et seq. On August 13, 2015, after a preliminary review of the information submitted, the Director accepted the Petitioner's request.

The Petitioner receives health care benefits as a dependent through a plan sponsored by Western Michigan University (the plan), 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 August 24, 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.

## II. FACTUAL BACKGROUND

Medicare is the Petitioner's primary coverage. He has secondary coverage through the plan and those health care benefits are described in BCBSM's *Community Blue Group Benefits Certificate ASC*<sup>1</sup> (the certificate).

The Petitioner, [REDACTED], has Lennox Gastaut Syndrome, which causes epileptic seizures, and he has difficulty expressing himself. On April 25, 2014, his mother purchased an iPad, a tablet computer, to help him communicate his needs because his speech is limited. The cost of the iPad was \$717.46.

When the Petitioner's mother requested reimbursement from BCBSM for the cost of the device as an item of durable medical equipment, BCBSM denied the request.<sup>2</sup> The Petitioner appealed the denial through the plan's internal grievance process. At the conclusion of that process, BCBSM issued a final adverse determination dated June 19, 2015, affirming its denial. The Petitioner now seeks a review of that final adverse determination from the Director.

## III. ISSUE

Is the plan required to cover the iPad?

## IV. ANALYSIS

### Petitioner's Argument

In a letter dated August 3, 2015, filed with the request for an external review, the Petitioner's mother wrote:

. . . I submitted an appeal on behalf of my son for a durable medical expense, an iPad that I purchased from the Apple store because I could not find a durable medical supplier from which to purchase the iPad. He uses the iPad to communicate his basic needs, and also uses it in his speech and music therapy that he has at home. He has benefited and continues to benefit greatly from this, as his speech is limited, but is showing progress and is able to explain what he needs and wants using the iPad. This is primarily medical, as he is also better able to explain when he is hurting or uncomfortable, something that he was not able to do

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1 BCBSM form no. 457F, effective 01/14.

2 It is not evident in the record if the claim for the iPad was ever submitted to Medicare as the primary coverage.

in the past. Especially considering that his condition is declining with age, the iPad is becoming something that we are relying on for him to communicate with us.

In an undated “To Whom It May Concern” letter, the Petitioner’s music therapist explained:

In September of 2013, this Music Therapist began working with [the Petitioner]. Initially, [he] appeared to have difficulty expressing himself throughout the session, requiring maximum verbal prompting to express his wants and needs. In many instances, the music therapist would initiate an experience without input [him], due to the fact that he was unable to express his wishes. The Music Therapist has since provided the use of her personal iPad during sessions with [the Petitioner]. The use of this device as assisted him in the areas of:

- Choosing experiences to be completed during the session, including song titles and instrument names.
- Completing simple 1-step directions through identifying items through the use of a communication application.
- Identification of common food items, with the purpose to generalize this knowledge to allow [him] to request meals independently.

Overall, the use of the iPad as a communication device has appeared to help [him] express his wants and needs without outside suggestion interfering with his wishes. . . .

It is this Music Therapist’s opinion that [the Petitioner] would benefit greatly from the use of an iPad as a communication device, as well as an opportunity for continued learning and growth in the safety and security of his own home through academic applications. . . .

### BCBSM’s Argument

In its final adverse determination, BCBSM’s representative told the Petitioner’s mother:

This letter will inform you of the outcome of the appeal you filed on behalf of your son . . . and the managerial-level conference conducted with you on June 15, 2015. The purpose of the conference was to discuss the denial of payment for the iPad (procedure code E1399) you purchased for your son . . . to use during his speech therapy. . . . After review, our denial of payment is maintained. . . .

Your son . . . is an eligible dependent covered under *Community Blue Group Benefits Certificate ASC*. On page 36 of the *Certificate* it describes your durable medical equipment benefit. We pay for the use of durable medical equipment while you are in the hospital; or for the rental or purchase of durable medical

equipment from a hospital (at the time of discharge) or from a DME supplier who meets BCBSM qualifications and standards, when prescribed by a physician or certified nurse practitioner. However, as explained on page 37 of the *Certificate*, we do not pay [for] self-help devices not primarily medical in nature.

In this instance, you purchased an iPad to assist [the Petitioner] with his speech therapy. While I understand you want to improve [his] ability to express his basic needs to others, an iPad's use is not primarily medical. As a result, the purchase of an iPad is not a reimbursable service under your health care plan. We are required to administer benefits in accordance with the terms of your group coverage.

### Director's Review

While computers are not mentioned in the certificate, if they are to be covered at all it would be as items of durable medical equipment (DME). To be covered, DME must meet certain requirements. The first is that the DME must be obtained from a qualified supplier. The certificate (p. 36) says:

#### **We pay for:**

\* \* \*

- Rental or purchase of durable medical equipment from a hospital (at the time of discharge) or from a DME supplier who meets BCBSM qualification standards, when prescribed by a physician or certified nurse practitioner. [Underlining added]

The explanation of benefit payments statement dated March 6, 2015, indicates that the iPad was purchased from an Apple Store, a nonparticipating provider, i.e., it has not signed an agreement with BCBSM to provide DME for the plan and therefore does not meet BCBSM's qualification standards.

The second requirement is that the DME must serve a medical purpose. The certificate (p. 143) defines "durable medical equipment" as "[e]quipment that can withstand repeated use and that is used for a medical purpose by a patient who is ill or injured. It may be used in the home." The certificate (p. 37) further says:

#### We do not pay for:

- Exercise and hygienic equipment, such as exercycles, Moore Wheel, bidet toilet seats and bathtub seats
- Deluxe equipment, such as motorized wheelchairs and beds, unless medically necessary and required so the patient can operate the equipment themselves

- Comfort and convenience items, such as bed boards, bathtub lifts, overbed tables, adjust-a-beds, telephone arms or air conditioners
- Physician's equipment, such as stethoscopes
- Self-help devices not primarily medical in nature, such as sauna baths and elevators [underlining added]
- Experimental or investigative equipment

While a computer may be used, as in the Petitioner's case, as a self-help device to enhance communication capabilities, the device itself is not "primarily medical in nature." It has wide general use outside of medicine as a consumer electronic product.

Based on the foregoing, the Director finds that BCBSM's denial of coverage for the iPad was consistent with the terms and conditions of the certificate.

#### V. ORDER

The Director upholds BCBSM's final adverse determination of June 19, 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 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:

  
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Randall S. Gregg  
Special Deputy Director