

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. 149264-001-SF

██████████

Plan Sponsor,

and

Blue Cross Blue Shield of Michigan, Plan Administrator,

Respondents.

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Issued and entered  
this 10<sup>th</sup> day of September 2015  
by Randall S. Gregg  
Special Deputy Director

**ORDER**

**I. PROCEDURAL BACKGROUND**

██████████ (Petitioner) was denied coverage for additional days in a skilled nursing facility by her health plan. On August 7, 2015, she 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 14, 2015, after a preliminary review of the information submitted, the Director accepted the Petitioner's request.

The Petitioner receives health care benefits through a plan sponsored by the State of Michigan (the State Health Plan PPO or 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 request for external review and asked for the information it used to make the plan's final adverse determination. BCBSM responded on August 21, 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.*

To address the medical issue in this case, the Director assigned it to an independent medical review organization which provided its analysis and recommendation on August 27, 2015.

## II. FACTUAL BACKGROUND

The Petitioner's health care benefits are described in the plan's *Your Benefit Guide - State Health Plan PPO for Non-Medicare Retirees* (the benefit guide).<sup>1</sup>

On May 26, 2015, the Petitioner was admitted to a skilled nursing facility (SNF) following a hospitalization for a T6 laminectomy. She was initially approved for care in the facility for 18 days (May 26 through June 12, 2015). When a request for additional days was made, BCBSM denied it on the basis that the Petitioner did not meet the plan's criteria for continued SNF care after June 12, 2015.

The Petitioner appealed the denial through BCBSM's internal grievance process. BCBSM held a managerial-level conference and then issued the plan's final adverse determination dated June 18, 2015, upholding its decision. The Petitioner now seeks a review of that final adverse determination from the Director.

## III. ISSUE

Did BCBSM correctly deny coverage for SNF care after June 12, 2015?

## IV. ANALYSIS

### Petitioner's Argument

In her request for an external review the Petitioner wrote:

I need additional skilled nursing care coverage from 6-13-15 to present. I'm currently residing at [REDACTED] Blue Cross Blue Shield discontinued coverage on 6-12-15. . . .

In a July 20, 2015, letter, the Petitioner's nurse practitioner wrote:

This is to certify that [the Petitioner] was seen in our clinic on 7/20/2015.

She is currently in a wheelchair and has been since July of 2010 from complications of a spinal surgery that caused [her] to be partially paralyzed. She has been in a wheelchair / powerchair ever since. She cannot walk at all and her mobility is severely limited.

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<sup>1</sup> Updated 9/19/2014.

### Respondent's Argument

In its final adverse determination, BCBSM told the Petitioner:

. . . After review of your medical records, you do not meet the criteria for preauthorization of additional days in the skilled nursing facility.

\* \* \*

Our medical consultant reviewed the information provided in your appeal for additional days in a skilled care facility using InterQual Criteria for Level I. InterQual Criteria is the licensed guidelines used to measure clinical criteria and medical interventions. Our medical consultant determined:

Your medical record was reviewed by a board certified Blue Cross Blue Shield of

Michigan medical consultant for an appeal for a continued stay at the skilled nursing facility from June 13, 2015 onwards for 14 days. InterQual criteria for Skilled Therapy Level 1 were applied in the review of this case following back surgery and revision of spinal shunt.

The case notes from the medical record were reviewed. It was determined that you needed physical assistance in areas of daily care like bathing, dressing and personal hygiene. You are unable to walk and transfers needed hoyer lift. You are able to use electric wheelchair under supervision after receiving therapy for 18 days this admission and multiple past admissions since 2014. Your further care could have been provided at home with home health care under the supervision of your family or at long term care facility. Therefore, the request for skilled nursing facility stay from June 13, 2015 for 14 days was not approved.

Because you do not meet the medical criteria, authorization cannot be approved at this time.

### Director's Review

The benefit for skilled nursing care is described in the benefit guide (pp. 29-30). The benefit guide (p. 5) also says:

Unless otherwise specified, a service must be medically necessary to be covered by the [State Health Plan] PPO. A service is deemed medically necessary if it is required to diagnose or treat a condition, and which BCBSM determines is:

- Appropriate with regard to the standards of good medical practice and not experimental or investigational

- Not primarily for your convenience or the convenience of a provider; and
- The most appropriate supply or level of service which can be safely provided to you. “Appropriate” means the type, level and length of care, treatment or supply and setting that are needed to provide safe and adequate care and treatment.

BCBSM said the Petitioner did not meet its criteria for additional skilled nursing facility care, i.e., it was not medically necessary. To evaluate that conclusion, the Director presented the issue to an independent review organization (IRO) for analysis, as required by section 11(6) of the Patient’s Right to Independent Review Act, MCL 550.1911(6).

The IRO physician reviewer is board certified in physical medicine and rehabilitation and has been in practice for more than 18 years. The IRO report included the following analysis and recommendation:

**Recommended Decision:**

The MAXIMUS physician consultant determined that it has not been medically necessary for the member to be treated at a skilled nursing facility level of care starting 6/12/15.

**Rationale:**

\* \* \*

The results of the consultant’s review indicates that this case involves a 60 year-old female who has a history of scoliosis and spinal stenosis with incomplete paraplegia and bilateral foot drop, cervical and thoracic syrinx with shunt placement, hydrocephalus, MRSA, seizure, third nerve palsy of the left eye with panfacial trauma and severe unreduced orbital fracture. The member underwent a T6 laminectomy and shunt placement on 5/14/15. The member was admitted to a skilled nursing facility on 5/26/15. At issue in this appeal is whether it has been medically necessary for the member to be treated at a skilled nursing facility level of care starting 6/12/15.

The MAXIMUS physician consultant explained that generally accepted criteria for coverage of a skilled nursing facility level of care include that a patient requires skilled nursing and / or skilled rehabilitation services on a daily basis that, as a practical matter, can only be provided in a skilled nursing facility on an inpatient basis and there must be an expectation for practical improvement with realistic goals. This member has been functioning from a wheel since 2010. The physician consultant indicated that the skilled nursing facility level of care rehabilitation that the member received from 5/16/15 through 6/12/15 did not demonstrate a change in functional status. The consultant also indicated that the member does not have a medical condition that requires skilled nursing. The

member's bowel and bladder care issues are longstanding and do not require skilled care. The physician consultant explained that the member does not demonstrate an expectation for rehabilitation to produce any functional improvement beyond the level that existed on 6/12/15, which was consistent with her baseline.

Pursuant to the information set forth above and available documentation, the MAXIMUS physician consultant determined that it has not been medically necessary for the member to be treated at a skilled nursing level of care starting 6/12/15. [Citations omitted]

The Director is not required to accept the IRO's recommendation. *Ross v Blue Care Network of Michigan*, 480 Mich 153 (2008). However, the recommendation is afforded deference by the Director. In a decision to uphold or reverse an adverse determination, the Director must cite "the principal reason or reasons why the [Director] did not follow the assigned independent review organization's recommendation." MCL 550.1911(16)(b). The IRO's analysis is based on experience, expertise, and professional judgment. In addition, the IRO's recommendation is not contrary to the terms of coverage in the benefit guide. MCL 550.1911(15).

The Director, discerning no reason to reject the IRO's recommendation, finds that it was not medically necessary for the Petitioner to have care in a skilled nursing facility after June 12, 2015, and therefore SNF care after that date is not a covered benefit under the plan.

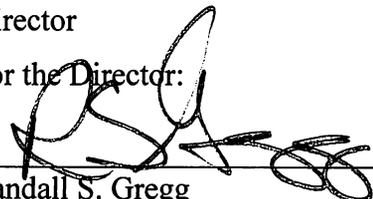
#### V. ORDER

The Director upholds the plan's final adverse determination of June 18, 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 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