

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. 149744-001-SF

State of Michigan, Plan Sponsor,

and

Blue Cross Blue Shield of Michigan, Plan Administrator,

Respondents.

Issued and entered
this 15th day of October 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 September 8, 2015, he 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 September 15, 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 plan), a self-funded governmental health plan subject to 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 September 23, 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 raised, the case was assigned to an independent medical review organization which provided its analysis and recommendation on September 30, 2015.

II. FACTUAL BACKGROUND

The plan's benefits are described in the plan's *Your Benefit Guide - State Health Plan PPO for Non-Medicare Retirees* (the benefit guide).

The Petitioner has muscular dystrophy and uses a wheelchair for his mobility-related activities of daily living. On March 27, 2015, he received a new power wheelchair with a power seat elevation system. BCBSM, acting for the plan, approved coverage for the wheelchair and paid 100% of its approved amount for it. However, BCBSM denied coverage for the power seat elevation system, saying it was a convenience item that was not medically necessary. The charge for the power seat elevation system was \$1,895.00.

The Petitioner appealed the denial through the plan's internal grievance process. After holding a managerial-level conference, BCBSM issued a final adverse determination dated July 9, 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 the power seat elevation system?

IV. ANALYSIS

Respondent's Argument

In its final adverse determination, BCBSM told the Petitioner:

A board-certified D. O., in Internal Medicine reviewed your claim, your appeal and your health care plan benefits for [BCBSM]. Our medical consultant determined:

All documentation was reviewed. You are appealing the denial of payment for a power seat elevation system for your motorized wheelchair. You have Muscular Dystrophy and require help transferring. According to BCBSM policy, "Durable Medical Equipment," (DME) items that are considered deluxe or convenience items, such as the power seat elevation system, are not within the definition of DME as they are not medically necessary.

Because our medical consultant determined that the item at issue is considered a deluxe or convenience item, and therefore not medically necessary, we cannot approve coverage.

Petitioner's Argument

On the external review request form the Petitioner wrote:

Over eight years ago BCBSM approved and paid for a power chair with elevating seat for me. An exact replacement chair was ordered and received based on a medical evaluation, home assessment, and my medical needs. An elevating seat is not a deluxe or

convenience for me, but a necessity, especially as I now live alone. There are over 30 types of neuromuscular disorders and everyone is affected in different ways. My chair was beyond repair due to its age and condition. A call to BCBSM informed me that my policy provides for a replacement after 5 years. Please approve my appeal. Thank You.

In a medical note dated February 10, 2015, the Petitioner's physician's assistant recorded this information:

Pt [*patient*] is dependent on power scooter with elevating seat

He has limb-girdle muscular dystrophy. He was diagnosed in 1979 and his weakness has been progressive since that time. Pt is unable to sit up, transfer, stand and ambulate. He has severely impaired strength in both the UE [*upper extremity*] and LE [*lower extremity*]. His mobility is significantly limited d/t his decreased strength. He needs assistance in rising from a seated position, standing, transferring, sitting from a laying position. He is unable to stand or walk even with a walker at this time. He does not have the UE strength to power a wheel chair, cane or walker. He has very limited strength in his shoulder girdle that prevents him from using other mobility devices. He does have sufficient strength to operate a switch for the power scooter. Pt is a fall risk and wife is unable to lift his weight if he falls.

* * *

Pt has been using a scooter for many years and is willing and able to operate it successfully in his home. Pt requires a power scooter with elevating seat.

Director's Review

The durable medical equipment benefit is described in the benefit guide (p. 13):

Your plan covers items like oxygen, CPAP and related respiratory equipment and supplies, ostomy supplies, and parenteral and enteral nutrition therapy, wheelchairs, walkers, canes, crutches and hospital beds ordered by a doctor or other health care provider for use in the home. Some items must be rented.

DME must be medically necessary to be covered (benefit guide, p. 5). "Medically necessary" is defined in the benefit guide (p. 55) as

health care services or supplies needed to prevent, diagnose or treat an illness, injury, disease or its symptoms and that meet accepted standards of medicine.

The benefit guide (p. 38) includes this exclusion:

In addition to the exclusions listed with the benefit, the following services are not covered under the SHP PPO:

* * *

- Items for the personal comfort or convenience of the patient

BCBSM's medical policy title "Durable Medical Equipment"¹ has this guidance (p. 2):

The following items do *not* meet the required definition of durable medical equipment:

- Comfort/convenience items (e.g., bedboards, bathtub lifts, overbed tables, adjust-a-beds, telephone arms, air conditioners, etc.)

* * *

- Deluxe equipment (ex: chrome wheels for a wheelchair, special colored equipment, seat attachment for a walker, etc.)

To evaluate BCBSM's decision that the power seat elevation system was not medically necessary or was an item of convenience, the Director presented the question 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 12 years. The IRO report included the following analysis and recommendation:

Recommended Decision:

The MAXIMUS physician consultant determined that the power seat elevation system that the member received on 3/27/15 was not a deluxe or convenience item and was medically necessary for treatment of his condition.

Rationale:

* * *

The member has been functioning from a power wheelchair base due to his limb-girdle muscular dystrophy, but his current chair is no longer operational and is non-repairable. The MAXIMUS physician consultant explained that the member is unable to independently transfer or complete mobility-related activities of daily living without the use of an elevated seat lift. The physician consultant indicated that the member's medical necessity for the requested attachment is supported by his physician and the appropriate prescription for an elevated seat lift. The consultant explained that the requested power seat elevation system is medically reasonable and necessary for the member's mobility limitations. The physician consultant also explained that this device is not a convenience or comfort item in this member's case. [Citations omitted]

Pursuant to the information set forth above and available documentation, the MAXIMUS physician consultant determined that the power seat elevation system that the member received on 3/27/15 was not a deluxe or convenience item and was medically necessary for treatment of his condition.

1 Effective 3/1/15.

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 any provision of the Petitioner's certificate of coverage. MCL 550.1911(15).

The Director, discerning no reason to reject the IRO's recommendation, finds that the power seat elevation seat elevation system is not a deluxe or convenience item and is medically necessary for treatment of the Petitioner's condition.

V. ORDER

The Director reverses BCBSM's final adverse determination of July 9, 2015.

BCBSM shall immediately cover the Petitioner's power seat elevation system, and shall, within seven days of providing coverage, 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 telephone 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 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:



Randall S. Gregg
Special Deputy Director