

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. 151787-001-SF

State of Michigan, Plan Sponsor
and
Blue Cross Blue Shield of Michigan, Plan Administrator
Respondents

Issued and entered
this 9th day of March 2016
by Randall S. Gregg
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

On February 4, 2016, ██████████, authorized representative of ██████████ (Petitioner), filed for external review with the Department of Insurance and Financial Services (DIFS). The request for review concerns a denial of coverage issued by Blue Cross Blue Shield of Michigan (BCBSM). BCBSM is the administrator of the Petitioner's health benefit plan which is sponsored by the State of Michigan. The plan's benefits are described in the State of Michigan/BCBSM document titled *Your Benefit Guide State Health Plan PPO*.

The request for external review was filed under Public Act No. 495 of 2006, MCL 550.1951 *et seq.* Act 495 requires the Director to provide external reviews to a person covered by a self-funded health plan that is established or maintained by a state or local unit of government. The Director's review is performed "as though that person were a covered person under the Patient's Right to Independent Review Act." (MCL 550.1952) The Petitioner's health benefit plan is such a governmental self-funded plan.

On February 11, 2016, after a preliminary review of the information submitted, the Director accepted the request for review. The Director notified BCBSM of the appeal and asked it to provide the information used to make its final adverse determination. BCBSM furnished its response on February 19, 2016.

It initially appeared that an independent medical review would be required in this case to determine whether the Petitioner has end stage renal disease (ESRD). See MCL 550.1911(6). A medical review was ordered and a report was submitted to the Director on February 25, 2016. It was subsequently determined that, while the Petitioner had ESRD at the time of her transplant, she did not have ESRD after the transplant. Consequently, a medical review was not required to resolve this matter. The submitted medical reviewer’s report was not relied upon in making any findings in this order.

II. FACTUAL BACKGROUND

The Petitioner, at the time of this appeal, was [REDACTED] years old. She is an active State of Michigan employee. The Petitioner had kidney disease (reflux nephropathy) and had been a kidney transplant candidate since 2009. On March 20, 2013, she received a kidney transplant. At that time the Petitioner had ESRD.¹ BCBSM approved coverage for the surgery and follow-up care through August 31, 2015.

Between September 4, 2015 and October 2, 2015 the Petitioner received additional follow-up care:

<u>DATE</u>	<u>SERVICE</u>	<u>CHARGE</u>
9/4/15	Chemotherapy	\$2,346.00
9/11/15	Office visit	95.00
9/17/15	Office visit	105.00
9/21/15	Laboratory tests	122.00
10/2/15	Chemotherapy infusion	346.00

BCBSM has denied coverage for these medical services, asserting that, for the dates in question, the Petitioner’s primary insurance coverage was through Medicare. (According to BCBSM, the September 17 claim has been paid by Medicare.)

The Petitioner appealed the denial through BCBSM’s internal grievance process. BCBSM held a managerial-level conference and, on November 18, 2015, issued a final adverse determination affirming its claims decisions. The Petitioner now seeks a review of that adverse determination from the Director.

1. The Center for Medicare & Medicaid Services defines ESRD as a medical condition in which a person’s kidneys cease functioning on a permanent basis leading to the need for a regular course of long-term dialysis or a kidney transplant to maintain life.

III. ISSUE

Did BCBSM correctly deny coverage for the medical services the Petitioner received between September 4 and October 2, 2015?

IV. ANALYSIS

Respondent's Argument

In its final adverse determination to the Petitioner, BCBSM wrote:

On page 14 of *Your Benefit Guide*, under **End Stage Renal Disease (ESRD)** it explains that Blue Cross Blue Shield of Michigan (BCBSM) will coordinate their payment with Medicare for all covered services used by members with ESRD.

Your Benefit Guide also explains when BCBSM coverage is the primary or secondary plan:

Your BCBSM coverage is your primary plan for all covered services for up to 33 months, which includes the three-month (maximum) waiting period and the 30-month coordination period. After the 30-month coordination period ends, BCBSM is your secondary plan and Medicare is your primary plan.

Your Benefit Guide further explains when Medicare coverage begins:

For members with ESRD, Medicare coverage begins the first day of the fourth month of dialysis.

I confirmed that your coordination period was from March 1, 2013 through August 31, 2015, and BCBSM was your primary plan. Medicare became your primary plan on September 1, 2015. Furthermore, I confirmed that you would have been notified of your Medicare effective date when you contacted Social Security to apply for coverage.

The claims for chemotherapy, injection and laboratory services you received from St. John Hospital and Medical Center on September 4, 2015, September 21, 2015 and October 2, 2015, and the claim for the office visit service you received from Infinity Primary Care PLLC on September 11, 2015 have to be submitted to Medicare for payment. The claims must be submitted to Medicare because Medicare became your primary payer following your ESRD coordination period. Furthermore, I confirmed your coverage has not been terminated; however, Medicare is your primary plan.

Petitioner's Argument

In a letter dated January 14, 2016 to DIFS accompanying the request for an external review, the Petitioner's authorized representative maintains that Petitioner does not have ESRD and has never been on dialysis and for that reason is entitled to coverage from BCBSM for her post-transplant services under the terms of the *Benefit Guide* (page 21).

In a letter dated February 18, 2016, the Petitioner's representative wrote:

After suffering with chronic kidney disease for many years, [Petitioner] underwent a pre-emptive kidney transplant on March 20, 2013, at St. John Hospital Transplant Center in Detroit, Michigan. The kidney transplant was pre-approved by BCBSM, [Petitioner's] employer health insurance carrier.

Both before and after her kidney transplant, [Petitioner] has remained a full time employee of the State of Michigan, where she is employed today.

At no time has [Petitioner] ever been on dialysis. Not before her surgery and not after her kidney transplant. [Petitioner's] diagnosis is chronic kidney disease.

[Petitioner] is a post transplant patient, with chronic kidney disease, and therefore is entitled to health care benefits from her insurer based on the policy benefits for post transplant patients.

All [Petitioner's] medical fees and costs, pre transplant and post transplant have been covered by BCBSM up to September 1, 2015. [Petitioner] received a phone call from a representative of BCBSM in late September 2015, advising her that BCBSM was not paying any of her medical fees or costs – even those unrelated to the surgery. [Petitioner] never received a written denial of benefits which she was entitled to under her policy.

However, due to the serious nature of her post transplant health, and the fact she must receive anti rejection infusions monthly or she will die, a letter disputing the denial was sent to BCBSM, and after a phone conference, the only letter to come from BCBSM was sent to [Petitioner] on November 18, 2015, denying her coverage, and her appeal.

Director's Review

The central issue in this case is whether the Petitioner's primary health plan is Medicare or the State of Michigan/BCBSM. Under federal law, an individual is eligible for Part A and Part B Medicare benefits for a period of 36 months after the individual has received a kidney transplant.² The federal statute establishing the Medicare end stage renal disease program can be found at 42 USC 426-1. The program is also described in the Medicare booklet, *Medicare Coverage of Kidney Dialysis & Kidney Transplant Services*.

The State of Michigan/BCBSM plan provided coverage for the Petitioner's March 20, 2013 transplant and her follow-up care until August 31, 2015 (the end of the 30 month coordination period that began in March 2013 when the transplant was performed). The Petitioner then enrolled in Medicare with an effective date of September 1, 2015. At that time, Medicare became the Petitioner's primary insurer. The medical services at issue in this appeal occurred during the period when Medicare was the primary insurer.

2. This benefit is also available for individuals who have received kidney dialysis. This provision does not apply to the Petitioner who has never been on dialysis.

The State of Michigan/BCBSM *Benefit Guide* (page 14) states:

We will coordinate our payment with Medicare for all covered services used by members with ESRD....Therefore, it is important that members with ESRD file a valid application for Medicare with the Social Security Administration....

When BCBSM coverage is the primary or secondary plan

Your BCBSM coverage is your primary plan for all covered services for up to 33 months, which includes the three-month (maximum) waiting period and the 30-month coordination period. (A medical evidence report may be used to establish the coordination period.) After the 30-month coordination period ends, BCBSM is your secondary plan and Medicare is your primary plan.

When Medicare Coverage begins

For member with ESRD, Medicare coverage begins the first day of the fourth month of dialysis provided, including hemodialysis and peritoneal dialysis.

The Director is not persuaded by the Petitioner's argument that, because she has never received dialysis, she may continue to receive health care benefits with the State of Michigan/BCBSM benefit plan as her primary insurer. The Medicare ESRD program provides for Medicare to be the primary insurer for ESRD patients based on an individual being *either* a dialysis recipient or a transplant recipient. While the Petitioner bases her argument on one provision of the BCBSM *Benefit Guide* ("Medicare coverage begins the first day of the fourth month of dialysis provided."), other *Benefit Guide* provisions indicate that the State of Michigan/BCBSM coverage is intended to be consistent with Medicare's ESRD rules ("We will coordinate our payment with Medicare for all covered services used by members with ESRD...." and "After the 30-month coordination period ends, BCBSM is your secondary plan and Medicare is your primary plan.").

BCBSM's decision not to pay the September and October 2015 claims as the Petitioner's primary health plan was consistent with the terms of the *Benefit Guide* and the Medicare provisions related to kidney transplants.

The Director finds that the State of Michigan/BCBSM plan is not responsible, as primary health plan, for coverage of the medical services provided on September 4, 2015, September 11, 2015, September 21, 2015 and October 2, 2015. The Director notes that the Petitioner has one year (from the date the service was provided) to file her claims with Medicare. Once Medicare has processed the claims, the Petitioner may submit them to BCBSM as the secondary plan.

V. ORDER

The Director upholds BCBSM's final adverse determination of November 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:

A handwritten signature in black ink, appearing to read 'R. S. Gregg', is written over a horizontal line.

Randall S. Gregg
Special Deputy Director