

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. 151789-001

Blue Cross Blue Shield of Michigan,
Respondent.

Issued and entered
this 17th day of February 2016
by **Randall S. Gregg**
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

██████████ (Petitioner) requested authorization for a prescription drug. His health plan, Blue Cross Blue Shield of Michigan (BCBSM), denied coverage for the drug.

On January 20, 2016, the Petitioner filed a request with the Director of Insurance and Financial Services for an external review of that denial under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* After a preliminary review of the material submitted, the Director accepted the request on January 27, 2016.

The Petitioner receives prescription drug benefits through a group plan underwritten by BCBSM. The Director immediately notified BCBSM of the external review request and asked for the information it used to make its final adverse determination. BCBSM provided its response on February 4, 2016.

To address the medical issue in the case, the Director assigned it to an independent medical review organization, which provided its analysis and recommendation on February 10, 2016.

II. FACTUAL BACKGROUND

The benefits are defined in BCBSM's *Blue Cross Premier Gold Benefits Certificate*¹ (the certificate).

The Petitioner has rosacea, a skin disorder. He used MetroGel to treat the condition until it became ineffective, then started using the prescription drug Ovace. When his physician asked BCBSM to cover the brand name Ovace to treat his rosacea, it denied the request, saying the drug is not on the

¹ BCBSM form no. 604F.

“Custom Select Drug List” for the Petitioner’s plan.

The Petitioner appealed the denial through BCBSM’s internal grievance process. At the conclusion of that process, BCBSM affirmed its decision in a final adverse determination dated December 14, 2015. The Petitioner now seeks a review of that final adverse determination from the Director.

III. ISSUE

Did BCBSM correctly deny coverage for Ovace?

IV. ANALYSIS

Petitioner’s Argument

On the external review request form the Petitioner wrote:

Prescription drug Ovace. I have rosacea. It is a sensitive disease on the face. This was prescribed for my face to try to control it. Had MetroGel many years ago and it does not work on my anymore. I will have this disease for life and it will only get worse.

The Petitioner’s dermatologist, in an undated letter to BCBSM, also wrote:

We recently submitted a prior authorization for the medication Ovace and it was denied. We would like to appeal this decision on behalf of [the Petitioner]. He has being using this medication for the past several years and has been the only thing that has been working for him. He's previous taken Klaron, Prascion, and Mirvaso. We respectfully request that you reconsider coverage for this product.

BCBSM’s Argument

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

... After review, I confirmed the denial must be maintained. The requested medication [Ovace] is excluded from coverage under your Custom Select drug plan.

You are covered under the *Blue Cross Premier Gold Benefits Certificate*. As indicated on page 86 (**Prescription Drugs Not Covered**), BCBSM does not pay for anything other than covered drugs and services. The covered drugs for your group's plan are listed in the BCBSM Custom Select Drug List (available at www.bcbsm.com). As Ovace is not listed on the Drug List, it is not covered by your plan.

To ensure all possible consideration was given to your appeal, a Clinical Pharmacist, RPh reviewed the submitted documentation and determined the following:

Documents reviewed: appeal request, initial case denied appeal, and managerial level conference notes. The requested medication is excluded from coverage under your Custom Select drug plan. Topical covered alternatives include Finacea gel and generic

MetroGel/Cream/Lotion 0.75%. Oral covered alternatives include generic Monodox, generic Vibramycin, generic Minocin, and tetracycline. Please see your Custom Select drug list for a complete list of covered alternatives.

Because Ovace is not covered under your prescription drug plan and covered alternatives exist, preauthorization could not be approved. If prescription Ovace is purchased, you will be liable for the charges.

Director's Review

The Petitioner's plan excludes coverage for drugs not on its formulary (called the "Custom Select Drug List"). However, the certificate (p. 89) provides for exceptions:

Requests for Drugs Not on BCBSM's Drug List

Your prescription drug coverage is limited to an approved drug list. If your drug is not on the approved drug list, you may request an exception. BCBSM must approve your request for a drug not on the list before it is dispensed. If approval is not obtained before the drug is dispensed, the drug will not be covered.

To request an exception, you must follow BCBSM's exception request process. The process is as follows:

- You, your designee or the provider who prescribed you the drug must contact BCBSM and request an exception for the drug that is not on BCBSM's approved drug list.
- We will decide whether to grant the request once we receive all of the information we need to make a decision. We will notify you, your designee, the prescribing provider or the provider's designee whether the request has been granted within 24 hours of receiving all of the needed information.

BCBSM's exception process is consistent with Michigan law. Section 3406o of the Insurance Code, MCL 500.3406o, says:

An insurer that delivers, issues for delivery, or renews in this state an expense- incurred hospital, medical, or surgical policy or certificate that provides coverage for prescription drugs and limits those benefits to drugs included in a formulary shall do all of the following:

* * *

(c) Provide for exceptions from the formulary limitation when a nonformulary alternative is a medically necessary and appropriate alternative. This subdivision does not prevent an insurer from establishing prior authorization requirements or another process for consideration of coverage or higher cost-sharing for nonformulary alternatives. Notice as to whether or not an exception under this subdivision has been granted shall be given by the insurer within 24 hours after receiving all information necessary to determine whether the exception should be granted.

The “Custom Select Drug List” does not include Ovace and BCBSM declined to make an exception for the Petitioner. However, an exception may be made under section 3406o if an alternative drug is a medically necessary and appropriate alternative.

The question of whether Ovace is a medically necessary and appropriate alternative to the dermatological drugs on the formulary was presented 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 certified by the American Board of Dermatology; is published in peer reviewed literature; and is in active practice. The IRO report included the following analysis and recommendation:

Clinical Rationale for the Decision:

The enrollee has requested that he continue brand name Ovace. The enrollee has not failed other standard therapies, which would include generic sulfacetamide / sulfur or azeleic acid. The enrollee is reported to have failed Klaron and Prascion; although medical records provided do not document this. Azeleic acid is a standard therapy for rosacea. Azeleic acid is a formulary preferred medication. Documentation does not show that Azeleic acid has been tried and has failed. Moreover there are alternative generic sulfur containing medications for the treatment of rosacea that are within the formulary available. As there are alternative, appropriate therapies from the formulary, the treatment is not considered medically necessary.

The plan follows Michigan statute 500.3406o as they have developed a formulary with the help of physicians, dentists, and pharmacists. The plan publishes the formulary as disclosure to its members. The treatment is not considered medically necessary as there are plan alternatives and therefore no exception to the formulary limitation is necessary.

The enrollee has rosacea. The enrollee has failed a standard first line therapy in Metrogel. The enrollee is also noted to have failed other sulfacetamide containing drugs (Klaron and Prascion). The enrollee is not noted to have failed topical azeleic acid or generic sulfacetamide sulfur. Therefore the enrollee has not failed the preferred formulary medications. Ovace would not be a medically necessary formulary exception without having first failed these preferred formulary medications.

Recommendation:

It is the recommendation of this reviewer that the denial issued by Blue Cross Blue Shield of Michigan . . . for Ovace be upheld.

The Director is not required to accept the IRO’s recommendation. *Ross v Blue Care Network of Michigan*, 480 Mich 153 (2008). However, the IRO’s 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 extensive

experience, expertise, and professional judgment. In addition, the IRO's recommendation is not contrary to any provision of the Petitioner's coverage. MCL 550.1911(15).

The Director, discerning no reason why the IRO recommendation should be rejected, finds that Ovace at this time is not a medically necessary or appropriate alternative to treat the Petitioner, and is therefore not a benefit under the terms of the certificate and Michigan law.

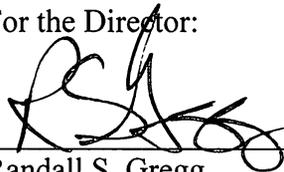
V. ORDER

The Director upholds BCBSM's December 14, 2015, final adverse determination.

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