

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. 152069-001

Blue Cross Blue Shield of Michigan,

Respondent.

Issued and entered
this 18th day of March 2016
by Randall S. Gregg
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

██████████ (Petitioner) was denied coverage for a standing device by his health care insurer, Blue Cross Blue Shield of Michigan (BCBSM).

On February 12, 2016, ██████████, the Petitioner's ██████████, filed a request with the Director of Insurance and Financial Services for an external review of BCBSM's decision 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 February 22, 2016.

The Petitioner receives health care benefits through an individual plan that is 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 responded on March 1, 2016.

To address the medical issue in this case, the Director assigned the matter to an independent medical review organization which provided its analysis and recommendation on March 7, 2016.

II. FACTUAL BACKGROUND

The Petitioner's health care benefits are defined in the *Blue Cross Premier Gold Benefits*

Certificate (the certificate).

The Petitioner has athetoid cerebral palsy. His physician asked BCBSM to cover a standing device and accessories. The device would allow the Petitioner to experience the beneficial effects of weight bearing and stretching. BCBSM denied request on the basis that Petitioner does not meet its medical necessity criteria.

The Petitioner's mother appealed the denial through BCBSM's internal grievance process. BCBSM held a managerial-level conference and issued a final adverse determination dated January 25, 2016, upholding its decision. The Petitioner now seeks a review of that final adverse determination from the Director.

III. ISSUE

Did BCBSM correctly deny authorization and coverage for the standing device requested by the Petitioner?

IV. ANALYSIS

Respondent's Argument

In its final adverse determination, BCBSM's representative informed the Petitioner's mother:

. . . After review, I confirmed the preauthorization denial must be maintained. [The Petitioner] does not meet the criteria for preauthorization for the "Easy Stand"¹ stander device and its accompanying accessories.

You are covered under the *Blue Cross Premier Gold Benefits Certificate*. **Section 3: What BCBSM Pays For** (page 22) of your certificate indicates that some services must be approved by BCBSM before they are performed. In addition, only medical services determined to be medically necessary will be covered under your plan.

* * *

For this reason, a board certified D.O. in Internal Medicine reviewed the submitted documentation to determine if the criteria for medical necessity were met and concluded the following:

All documentation reviewed. Your doctor is requesting approval for a stander device with accessories to help with mobility due to your Cerebral Palsy (a condition marked by impaired muscle coordination). According to the Blue

¹ "Easy Stand" is the brand name of the device the Petitioner has requested.

Cross Blue Shield of Michigan medical policy titled "Durable Medical Equipment," which follows Medicare Guidelines titled "Standing Wheelchairs," stander devices / standing wheelchairs can only be considered approvable devices for the pediatric (up to age 18 years) population. You are [REDACTED] years-old, an adult over age 18. The criteria for a stander device / standing wheelchair are not met.

Petitioner's Argument

In an undated letter of medical necessity accompanying the external review request, the Petitioner's physical therapist explained:

I am writing to provide expert testimony that the benefits of a standing frame is beneficial for an adult as well as a developing child. [The Petitioner's] stander was denied stating that weight bearing devices are approved for a growing child but not an adult. In children as well as adults, bone is constantly changing and remodeling. It is not a static structure. Non-weight bearing adults are at high risk for osteoporosis, fractures and loss of muscle flexibility. There is sufficient evidence to demonstrate that weight bearing is beneficial for adults and much of the research comes from NASA. Even the most physically fit adults, when placed in a non-weight bearing situations, such as space, suffer from loss of bone mass, muscle mass loss and overall weakness. There is also ample evidence showing that shorter periods of immobility and bed rest greatly effect bone mass, thus supporting weight bearing activities. . . .

The Bottom Line

- A lifetime of weight-bearing exercise is important for building and maintaining bone mass, improving balance and coordination, and promoting overall good health.
- Weight-bearing exercise should be resumed and maintained after a prolonged period of bed rest or immobilization to help recover bone lost during disuse.
- Those who cannot resume weight-bearing exercise are at significant risk for osteoporosis

[The Petitioner] has been diagnosed with Athetoid Cerebral Palsy and he is not able to move around like a typical adult and participate in weight bearing activities to maintain bone density. [He] is able to ambulate short distances in a walker with assist for safety. He is also able to transfer sit to stand with assist. Without assist, he is relegated to sitting in a chair or a bed, both of which are non-weight bearing positions. With the safety of the stander, [he] is able to participate in weight bearing activities that maintain his bone mass and muscle length that allow him to continue to participate in his ADLs and transfers. [The Petitioner] is

also cognitively impaired and requires a caregiver 24 / 7. His ability to maintain his limited upright mobility will allow him the ability to stay at home with the care of family. Without a daily program of upright activity, weight bearing and stretching he is at risk for bone mass loss, range of motion loss and dependent mobility.

The stander has worked to for years to provide [him] with standing and weight bearing opportunities. A stander is medically necessary for [Petitioner's] situation and he will greatly benefit from its use.

Director's Review

BCBSM determined that the Petitioner did not qualify for a standing device because he was over the age of 18. To make its decision, BCBSM apparently relied on its medical policy "Topic: Standing Wheelchairs," effective July 1, 2013, which says in part:

Non-ambulatory, physically disabled individuals may use standing systems for a variety of potential health-related reasons claimed by manufacturers, including: increasing range of motion; maintaining bone density; maintaining muscle strength and cardiovascular endurance; reducing swelling in the lower limbs; decreasing spasticity (muscle overactivity); preventing pressure sores; and improving bowel and bladder function.

* * *

Blue Cross Blues Shield of Michigan may consider standing wheelchairs medically necessary in pediatric patients who are still undergoing muscular and skeletal growth to assist in the optimization of potential growth and development. Coverage for medically necessary standing wheelchairs for children (ages 15 months through 18 years) with neurologic or muscular conditions affecting the lower extremities will be determined based on an individual consideration basis. BCBSM uses a review process that ensures a pediatric aged patient's medical condition warrants the use of a standing wheelchair. As such cases will be approved on the basis of medical necessity. Any decision to deny benefits for services on the basis that the services were not medically necessary must be rendered by a physician.

* * *

Although anecdotal reports in rehabilitation and marketing literature suggest multiple potential benefits for adult aged patients in using standing wheelchairs, the literature fails to include sufficient objective, evidence-based studies that definitively demonstrate such outcomes. As a consequence, most health plans, including Medicare do not cover standing devices as medically necessary durable medical equipment.

BCBSM will cover a standing device for children under the age of 18 if medically necessary but believes that there is insufficient evidence to warrant reviewing the medical necessity of standing devices for adults. 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 ten years. The IRO report included the following analysis and recommendation:

Recommended Decision:

The MAXIMUS physician consultant determined that the requested "Easy Stand" device with accompanying accessories is medically necessary for treatment of the member's condition.

Rationale:

* * *

The MAXIMUS physician consultant indicated that an overall conclusion from the literature reveals that standing is a current practice for treating problems caused by prolonged immobility. The physician consultant explained that the literature does not distinguish between adults and pediatric patients for the practice of standing for treatment of problems caused by prolonged immobility. Much of the literature focuses on the pediatric cerebral palsy population. Therefore, there is a paucity of research involving adult cerebral palsy patients. The consultant indicated that in general, standing systems are used by nonambulatory physically disabled people for a variety of reasons, which include, but are not limited to, psychosocial benefit. The physician consultant explained that while the literature is conflicting on the effects of standing devices on the bone mineral density of adults with cerebral palsy, the device can have a positive psychosocial impact and can improve psychosocial health and participation in daily activities, and enhance independence and productivity and therefore is not primarily for the convenience of a patient or provider. The consultant also explained that standing devices are generally accepted standards of medical practice in physically disabled patients as these devices have been used in adult spinal cord patients and stroke patients to prevent contractures and pressure ulcers. The physician consultant indicated that although the literature is sparse in regard to adult patients with cerebral palsy, this should not be used to limit the use of this device for this population. The United Cerebral Palsy webpage states that "Inadequate adult healthcare services have been shown to have a universal, direct and unsatisfactory impact on the adult lifespan" of patients with cerebral palsy. The consultant explained that these devices are used for adult patients with

physical disability, such as adult spinal cord and stroke patients. Therefore, physician consultant determined that the age limitation for the requested device in the Health Plan's policy on "Standing Wheelchairs" is not consistent with current standards of care.

The documentation provided for review indicates that the requested device allows the member to transfer independently from a sit to stand position, which can be considered an activity of daily living. The member has used and tolerated a stander for over 20 years. The use of a stander has allowed the member to participate more actively in the classroom setting and to complete class work. The physician consultant indicated that the documentation provided for review demonstrates that the member is at high risk for progressive contractures and the evidence in the literature supports that standing frames assist with contracture prevention. The consultant explained that there is no evidence in the literature that a standing frame is not to be used with an adult population. A recent study stated that stronger evidence supports the impact of home-based supported standing programs on range of motion and activity, primarily for individuals with stroke or spinal cord injury while mixed evidence supports impact on bone mineral density. Another study evaluated the psychological benefits of standing devices and found that the psychosocial impact of standing devices was generally experienced positively. A study that conducted follow-up assessment of 77 paraplegics and 22 quadriplegics who returned manufacturer's warranty cards for standing devices found that improvement in quality of life was reported by all users, less than 10% of users reported adverse side effects and reductions in leg spasticity and decreased incidence of pressure ulcers was also reported. Another study examined frequency and duration of standing in relation to outcomes through a survey of respondents with spinal cord injuries who used standing devices and found that respondents who stood 30 minutes or more per day had significantly improved quality of life with fewer bed sores and bladder infections and improved bowel regularity compare with those who stood for less time. The American Academy of Physical Medicine and Rehabilitation supported an updated 2013 position statement by the Rehabilitation Engineering and Assistive Technology Society of North America, which held the position that wheelchair standing devices are medically necessary as they enable certain individuals to benefits including improved functional reach to enable participation in activities of daily living, enhancement of independence and productivity, reduction of the occurrence of pressure sores, reduction of the occurrence of skeletal deformities and enhancement of numerous psychological and quality of life benefits.

Pursuant to the information set forth above and available documentation, the MAXIMUS physician consultant determined that the requested "Easy Stand" device with accompanying accessories is medically necessary for treatment of the member's condition. [References 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 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 Easy Stand device and accompanying accessories is medically necessary to treat the Petitioner's condition and therefore is a covered benefit.

V. ORDER

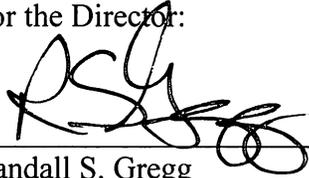
The Director reverses BCBSM's final adverse determination of January 25, 2016. BCBSM shall immediately cover a standing device and necessary accessories for the Petitioner, and shall, within seven days of providing coverage, furnish the Director with proof it has implemented this order.

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