

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. 153889-001-SF

City of Troy, Plan Sponsor,

and

Blue Cross Blue Shield of Michigan, Plan Administrator,

Respondents.

Issued and entered
this 21st day of June 2016
by Randall S. Gregg
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

██████████ (Petitioner) was denied coverage for a prescription drug by her health insurance carrier, Blue Cross Blue Shield of Michigan (BCBSM).

On May 26, 2016, the Petitioner 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.* After a preliminary review of the information submitted, the Director accepted the request on June 3, 2016.

The Petitioner receives prescription drug benefits through a health plan sponsored by the City of Troy (the plan), a governmental self-funded health plan as defined in Act 495. The plan is administered by BCBSM. The Director immediately notified BCBSM of the external review request and asked for the information it used to make the plan's final adverse determination. BCBSM responded on June 10, 2016.

Under Section 2(2) of Act 495, MCL 550.1952(2), the Director conducts this external review as though the Petitioner was a covered person under the Patient's Right to Independent Review Act (PRIRA), MCL 550.1901 *et seq.*

The issue in this external review can be decided by a contractual analysis. The Director reviews contractual issues under MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

II. FACTUAL BACKGROUND

The Petitioner's prescription drug benefits are described in BCBSM's *Preferred Rx Program Certificate ASC* (the certificate). The certificate is amended by *Rider PD-GB S10 / \$40-RXCF ASC Prescription Drug Generic / Brand Copayment Requirement with the Closed Formulary Cost Management Program* (the rider).

The Petitioner's coverage with the plan was effective on January 1, 2016. On March 26, 2016, she filled a prescription for itraconazole, an antifungal medication she uses to treat a chronic sinus condition. BCBSM, acting for the plan, covered the prescription and applied a \$40.00 copayment.

The Petitioner, believing the copayment should only be \$10.00, appealed through the plan's internal grievance process. During that process BCBSM determined that it had erred and that compounded itraconazole is not covered by the plan. It issued a final adverse determination dated May 9, 2016, reflecting that decision.

The Petitioner now seeks a review of that final adverse determination from the Director.

III. ISSUE

Is BCBSM required to cover itraconazole?

IV. ANALYSIS

The Plan's Argument

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

On page 13 of your Certificate, under **Section 3: Prescription Drugs Not Covered**, it states we will not pay for compounded drugs that contain any bulk chemical powders that are not approved by Blue Cross Blue Shield of Michigan (BCBSM). I confirmed that Itraconazole is an excluded bulk chemical powder under your prescription drug coverage and your claim from: March 29, 2016 was

processed and paid in error. Although your claim for Itraconazole was processed, this should not be considered precedent setting and future claims will process according to your prescription drug plan. At this time, we are not recalling payment. However, a recall of payment may occur if a routine audit is performed.

Petitioner's Argument

In her request for external review, the Petitioner wrote:

I have been taking anti-fungal, itraconazole, powder (I mix with saline at home) up my nose via nasatouch atomizer for years due to chronic fungal sinus infections causing polyps & need for surgery again. BCBS told me I needed prior-auth, which my ENT sent & they covered for \$40 (four times normal of \$10 copay because it's a "compound" of med + capsule packaging!). Then, did appeal where they determined to stop covering it all together!

Director's Review

Pharmaceutical compounding is the creation of a particular pharmaceutical product to meet the unique need of a patient. Compounding pharmacists combine or process appropriate ingredients for many reasons: to achieve a certain strength or dosage, to flavor a medication, to exclude unwanted nonessential ingredients, to change the form of the medication, etc. In the Petitioner's case, the compounding involved placing the bulk chemical form of itraconazole in Coni-Snap capsules.

The Petitioner's drug plan does not cover all compounded drugs. The certificate (pp. 12, 13) has this exclusion:

Section 3: Prescription Drugs Not Covered

We will not pay for the following:

* * *

- Compounded drugs that contain any bulk chemical powders that are not approved by BCBSM

The bulk chemical powders that are not approved by BCBSM are found on its "Bulk Chemical Exclusion Drug List." Itraconazole powder is on that list. Therefore, the Director concludes that the Petitioner's compounded itraconazole capsules are not a benefit under the terms of her coverage.

By concluding that compounded itraconazole is not a covered benefit, the Director does not need to address the issue of the appropriate copayment for the drug.

V. ORDER

The Director upholds the plan's final adverse determination of May 9, 2016.

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 'RS Gregg', is written over a horizontal line.

Randall S. Gregg
Special Deputy Director