

STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES
Before the Director of Financial and Insurance Regulation

In the matter of:

██████████
Petitioner

v

Blue Care Network of Michigan
Respondent

File No. 145283-001

Issued and entered
this 14th day of January 2015
by Randall S. Gregg
Special Deputy Director

ORDER

I. BACKGROUND

On December 9, 2014, ██████████ (Petitioner) filed a request for external review with the Director of Insurance and Financial Services under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* The Petitioner receives health care benefits through Blue Care Network of Michigan (BCN), a health maintenance organization, under BCN's *Certificate of Coverage for Individuals* and its *Silver 73 Prescription Drug Rider*.

The Director notified BCN of the external review and requested the information used in making its adverse determination. BCN furnished its response on December 15, 2014. After a preliminary review of the material submitted, the Director accepted the request for external review on December 16, 2014. BCN provided additional information on December 22, 2014.

The Petitioner has gastroesophageal reflux disease. Her physician prescribed Prilosec OTC to treat her condition. BCN denied coverage for the drug. The Petitioner appealed the decision through BCN's internal grievance process. BCN maintained its decision and issued its final determination November 13, 2014. The Petitioner now seeks a review of that adverse determination from the Director.

The Petitioner's request presented a medical question, the medical necessity of Prilosec OTC, which was assigned by the Director to be evaluated by an independent review organization, as required by section 11(6) of the Patient's Right to Independent Review Act,

MCL 550.1911(6). The independent review organization submitted its analysis and recommendation to the Director on December 30, 2014.

II. ISSUE

Did BCN correctly deny the Petitioner's request that coverage for Prilosec OTC be provided at the generic drug coverage level?

III. ANALYSIS

Respondent's Argument

In its final adverse determination, BCN wrote:

Our Step Two grievance panel...reviewed your request for authorization for Prilosec OTC, Dispense as Written (DAW), and upheld the previous denial. We based our decision on the rules of the Custom Select Formulary, stating that coverage is not available for any medication for which there is OTC equivalent in both strength and dosage. Additionally, the Panel has denied the copay tier reduction request because coverage is also not available for any multisource brand drugs, such as Prilosec OTC DAW.

Petitioner's Argument

The Petitioner argues that BCN provided one explanation for its denial or benefits in her first level appeal and a different, contradictory, reason in the final adverse determination. She states that in its first level ruling BCN wrote that "coverage may be provided in situations where documentation is received showing you have tried and failed all of the covered alternatives." When she demonstrated that none of the alternatives worked, BCN still denied coverage.

The Petitioner wrote in her external review request:

Please note when the plan deductible was met by me earlier this summer, a Tier 3 medication will cost the patient no less than \$80.00, which cunningly and effectively kills the coverage of a retail-price \$25.00 medication such as Prilosec OTC which happens to be working for the patient after many other medications have failed. I don't find this classification maneuvering at all conducive to the interests and care of the patient.

I contend that I should receive assistance with the costs of the Prilosec OTC. Even after consideration of Prilosec OTC more appropriately being in a Tier 1B class, after the plan deductible is met, there is a \$20.00 copay by the patient. This is not disagreeable to me, and BCN's share on this would be approximately

\$5.00 per month. I believe coverage for Prilosec OTC should be allowed as an exception, because nothing else works for me.

Director's Review

The Petitioner argues that Prilosec OTC is medically necessary because no other drug works for her. The Director requested an independent medical organization to review this claim. The IRO reviewer concluded that "Prilosec OTC is medically necessary and an appropriate alternative to the drugs listed on the formulary for this enrollee's condition." The reviewer then recommended that BCN's denial of coverage be overturned.

The Director agrees that Prilosec OTC is medically necessary for the Petitioner, since the alternative drugs have proven to be ineffective for her. However, the fact that a drug is medically necessary does not mean that an insurer is required to provide coverage for that drug. Insurers have broad discretion in determining which drugs will be listed on the insurer's drug formulary and what cost sharing requirements are attached to each drug.

Prilosec is a prescription drug used to treat gastroesophageal reflux disease. It is a prescription drug whose generic name is omeprazole. It is listed on page 30 of BCN's *Custom Select Drug List* (its formulary) where it is classified as a Tier 1B drug. Prilosec OTC is, as its name implies, an over the counter drug. It is available without prescription and costs about \$25.00 in the quantity prescribed for the Petitioner. Prilosec OTC is not listed on BCN's *Custom Select Drug List* which provides on page 5:

Several drugs and drug categories are excluded from coverage under this benefit, including:

* * *

- Over-the-counter medications...

Since Prilosec OTC is not on the *Custom Select Drug List* it is not a covered drug and, therefore has no associated copayment.

(In its final adverse determination, BCN cited section E(9) of the rider which provides: "[t]here is no coverage for Prescription Drugs for which there is an Over-the-Counter equivalent in both strength and dosage form." However, this provision is not relevant to the Petitioner's case since section E(9) deals with the question of coverage for prescription drugs and Prilosec OTC is an over-the-counter drug.)

There is no coverage available for Prilosec OTC under the Petitioner's prescription drug plan. The Director finds that, in denying coverage for Prilosec OTC, BCN has correctly applied the terms and conditions of the Petitioner's prescription drug plan.

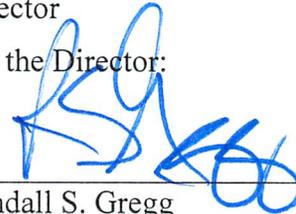
IV. ORDER

The Director upholds BCN's November 13, 2014 final adverse determination. BCN is not required to provide coverage for the Petitioner's Prilosec OTC.

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 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.

Annette E. Flood
Director

For the Director:



Randall S. Gregg
Special Deputy Director