STATE OF MICHIGAN

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

OFFICE OF FINANCIAL AND INSURANCE REGULATION

Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX
Petitioner
v **File No. 121671-001**

Blue Cross Blue Shield of Michigan
Respondent

Issued and entered
this 4th day of January 2012
by R. Kevin Clinton
Commissioner

ORDER

I. PROCEDURAL BACKGROUND

On June 1, 2011, XXXXX, authorized representative of XXXXX (Petitioner), filed a request with the Commissioner of Financial and Insurance Regulation for an external review under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq*. After a preliminary review of the material submitted, the request was accepted on June 8, 2011.

The Petitioner has health care coverage through a group underwritten by Blue Cross and Blue Shield of Michigan (BCBSM). His benefits are contained in the *Community Blue Group Benefits Certificate* (the certificate).

Because medical issues are involved, the case was assigned to an independent review organization which provided its analysis and recommendations on June 23, 2011. (A copy of the complete report is being provided to the parties with this Order.)

II. FACTUAL BACKGROUND

The Petitioner has a history of paroxysmal atrial fibrillation. He received mobile cardiac outpatient telemetry (MCOT) monitoring from December 6, 2010 to January 1, 2011, to monitor his cardiovascular functions. MCOT includes two elements: a device worn by a patient which transmits signals to a monitoring station where the cardiovascular functions are read and evaluated. The device and monitoring services are both provided by an XXXXX company, XXXXX, Inc. The charge for the MCOT services is $4,500.00.

BCBSM denied coverage, stating the MCOT was investigational. The Petitioner appealed the denial through BCBSM's internal grievance process. After a managerial-level conference held on March 16, 2011, BCBSM did not change its decision and issued a final adverse determination dated March 21, 2011.

III. ISSUE

Did BCBSM properly deny coverage for the Petitioner's MCOT?

IV. ANALYSIS

Petitioner's Argument

The Petitioner's representative argues that the MCOT device is not experimental or investigational. In the request for external review, the representative wrote:

> . . . Contrary to the finding in the Plan Denial Letter, and the denial of the first appeal the Services are well-established as clinically effective and are a covered Plan benefit that were medically necessary and appropriate for this Patient. This conclusion is supported by the clinical determinations of the Ordering Physician, the standards of care in the medical community, studies in peer-reviewed and other medical literature, the terms of the Patient's Plan coverage and applicable law.
>
> . . . This technology was approved by the FDA in November 1998 and is covered by the Level 1CPT codes 93229 for the technical component and 93228 for the professional component. Mobile cardiovascular telemetry services for the indication involved in this case have now been used effectively by the medical community in the United States for over a decade, and the health plans that cover this clinically valuable service for this indication include, among others, Medicare . . .Tricare, Highmark BC/BS, Independence BC/BS, Wellmark BCBS, Aetna, Cigna, and Humana.

BCBSM's Argument

In its final adverse determination, BCBSM wrote:

> . . . I considered all of the facts and information relevant to your appeal; however, I confirmed out denial determination is correct. The BCBSM/BCN Joint Uniform Medical Policy Committee (JUMP) has determined that it is investigational.
>
> * * *
>
> An investigational status means that the safety and effectiveness of a particular technology has not been definitively determined. An established technology means that the safety and effectiveness have been definitively determined.

> Investigational medical policies are reviewed regularly to guarantee that the investigational status continues to be supported by the evidence.
>
> As indicated on Page 6.3 of [Petitioner's] Community Blue Group Benefits Certificate, "We do not pay for experimental treatment (including experimental drugs or devices) or services related to experimental treatment . . ." Page 7.9 of the same certificate defines experimental treatment as "Treatment that has not been scientifically proven to be as safe and effective for the treatment of that patient's conditions as conventional treatment. Sometimes it is referred to as experimental services." Therefore, the charge remains the member's liability.

Commissioner's Review

The question of whether the Petitioner's MCOT was experimental for treatment of his condition was presented to an independent medical 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 reviewer is a physician certified by the American Board of Internal Medicine with a subspecialty in cardiovascular disease, is published in peer reviewed medical literature, and is in active practice. The reviewer's report included the following analysis:

> **Clinical Rationale for the Decision:**
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> In reviewing the available medical literature, there is sufficient data in the current medical literature to establish the superior efficacy of an MCOT compared to other external monitor in managing patients with palpations.
>
> In the study by Olson and Colleagues entitled "Utility of mobile cardiac outpatient telemetry for the diagnosis of palpitations, presyncope, syncope, and assessment of therapy efficacy." MCOT demonstrated a very high diagnostic capability. The authors conclude: "MCOT can detect asymptomatic clinically significant arrhythmias.…"
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> In their 2007 study published in the J Cardiovasc Electrophysiol, Rothman et al, conclude that MCOT provided a significantly higher yield than standard cardiac loop recorders in patients with symptoms suggestive of a significant cardiac arrhythmia.
>
> As such the use of MCOT would not be considered as experimental/ investigational in this case. MCOT is consistent with the standard of care in this case in the cardiology community.
>
> **Recommendation:**
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> It is the recommendation of this reviewer that the denial of coverage issued by Blue Cross Blue Shield of Michigan for the use of mobile cardiovascular telemetry services/technical support be overturned.

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the IRO's recommendation is afforded deference by the Commissioner. In a decision to uphold or reverse an adverse determination, the Commissioner must cite "the principal reason or reasons why the Commissioner did not follow the assigned independent review organization's recommendation." MCL 550.1911(16) (b). The IRO reviewer's analysis is based on extensive expertise and professional judgment and the Commissioner can discern no reason why the recommendation should be rejected in the present case.

V. ORDER

Respondent Blue Cross Blue Shield of Michigan's March 21, 2011, final adverse determination is reversed. BCBSM shall, within 60 days from the date of this Order, provide coverage for the Petitioner's mobile cardiac outpatient telemetry monitoring for the period December 6, 2010 through January 4, 2011. BCBSM shall, within seven (7) days of providing coverage, furnish the Commissioner with proof it has implemented this Order.

To enforce this Order, the Petitioner may report any complaint regarding implementation to the Office of Financial and Insurance Regulation, Health Plans Division, toll free at (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 county where the covered person resides or the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

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R. Kevin Clinton
Commissioner