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. 121555-001**

Blue Cross Blue Shield of Michigan
Respondent

Issued and entered
this 17th day of October 2011
by R. Kevin Clinton
Commissioner

ORDER

I. PROCEDURAL BACKGROUND

On May 23, 2011, XXXXX, authorized representative of XXXXX (Petitioner), filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act (PRIRA), MCL 550.1901 *et seq.* The Commissioner reviewed the request and accepted it on May 31, 2011.

The Commissioner immediately notified Blue Cross Blue Shield of Michigan (BCBSM) of the external review and asked for the information it used to make its final adverse determination. The Commissioner received BCBSM's response on August 12, 2011.

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

II. FACTUAL BACKGROUND

The Petitioner has individual coverage from BCBSM. Her benefits are defined in BCBSM's *Flexible Blue Individual Market* certificate (the certificate).

On February 16, 2011, the Petitioner had surgery to repair her rotator cuff. Following the surgery, she had several sessions of outpatient physical therapy (PT) at her surgeon's recommendation.

BCBSM denied payment for the PT, stating it was not a covered benefit under the certificate. The Petitioner appealed the denial. BCBSM held a managerial-level conference and then issued a final adverse determination dated May 6, 2011. The Petitioner asks the Commissioner to review that determination.

III. ISSUE

Is BCBSM required to pay for the Petitioner's post-surgery PT?

IV. ANALYSIS

Petitioner's Argument

The Petitioner believes her PT should be covered as part of the surgery. In a letter to BCBSM dated March 15, 2011, she wrote:

> . . . On February 16, 2011 I had rotator cuff surgery performed. The procedure had been pre-approved by Blue Cross Blue Shield. Upon starting to look into physical therapy, I was informed that Blue Cross Blue Shield provided no coverage for these procedures. You can imagine my surprise in that I never dreamed that this would not be covered with this sort of surgical procedure. I have spoken with my surgeon and been informed that physical therapy is always a required process after any rotator cuff surgery that he performs in order for the patient to have a successful and timely recovery.
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> * * *
>
> I am not looking for Blue Cross to provide therapy for a new ailment but to merely complete the recovery from the surgical procedure. It should be considered to be an extension of that surgical procedure plain and simple. In my opinion, your unwillingness to provide this benefit would be like you telling the surgeon you would pay for the surgery he performed but not pay for him stitching up the incisions or not paying for follow up visits to assess how the surgery went. Those things are considered a normal part of the procedure and frankly physical therapy should be considered part of the original surgery (which you pre-approved) as well. I cannot recover effectively without physical therapy and the services they provide.

The Petitioner's surgeon wrote a note to BCBSM dated March 16, 2011, explaining the need for the PT:

> [The Petitioner] underwent a rotator cuff repair on 2-16-11. Post operatively, she exhibited early signs of adhesive capsulitis and I felt physical therapy was necessary. The successful use of Physical Therapy in this situation alleviates the need for further surgery and further diagnostic work up. I know that it is not your habit to cover Physical Therapy, however, I believe in this instance, the use of it is actually saving her your company money. I would urge you to reconsider and cover a short term of Physical Therapy for [the Petitioner].

The Petitioner believes the PT is necessary for a successful recovery from the surgery.

BCBSM's Argument

In its final adverse determination of May 6, 2011, BCBSM explained its reason for denying coverage:

> We are unable to allow payment for your physical therapy services because they are not a benefit of your contract.
>
> * * *
>
> We do not dispute that your outpatient physical therapy services are a necessary and appropriate part of your care. Rather, we cannot allow payment because the contract in which you are enrolled does not include coverage for these services.

Commissioner's Review

The certificate, in "Section 3: Coverage for Hospital, Facility, and Alternatives to Hospital Care" (p. 3.19), specifically excludes coverage for outpatient PT:

> **Outpatient Hospital Services That Are Not Payable**
>
> The services listed under "Inpatient Hospital Services That Are Not Payable" are also not payable when provided as outpatient care. In addition, we do not pay for:
>
> * * *
>
> - Outpatient physical therapy treatment, speech and language pathology services, and occupational therapy including those provided by a freestanding outpatient physical therapy facility.

In an external review under the Patient's Right to Independent Review Act, the Commissioner's role is to determine whether a health plan correctly administered health care. Although the PT appears to be necessary and appropriate, it is simply not a covered benefit under the certificate. There is nothing in the certificate or in state law that would compel or allow the Commissioner to decide otherwise.

V. ORDER

The Commissioner upholds Blue Cross Blue Shield of Michigan's final adverse determination of May 6, 2011. BCBSM is not required to cover Petitioner's post-surgery physical therapy.

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 Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.