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. 122002-001**

Blue Cross Blue Shield of Michigan

Respondent

Issued and entered
this 31ST day of October 2011
by R. Kevin Clinton
Commissioner

ORDER

I. PROCEDURAL BACKGROUND

On June 22, 2011, 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, MCL 550.1901 *et seq*. The Commissioner reviewed the request and accepted it on June 29, 2011.

The Petitioner receives health care benefits under a certificate of coverage issued by Blue Cross Blue Shield of Michigan (BCBSM). The Commissioner notified BCBSM of the external review and requested the information used in making its adverse determination. The Commissioner received BCBSM's response on July 11, 2011.

The issue in this external review can be decided by a contractual analysis. The contract here is BCBSM's *Community Blue Group Benefits Certificate* (the certificate). 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

In June of 2009 the Petitioner was diagnosed with colon cancer. He had surgery for removal of the tumor followed by a 6-week course of chemotherapy which included the drug

Oxaliplatin. During treatment the Petitioner developed known side effects from Oxaliplatin, which included neuropathy of the hands and feet and hearing loss. His oncologist gave him a prescription for hearing aids which he obtained in December of 2010.

BCBSM denied coverage for the hearing aids ruling that they are excluded under the terms of the certificate. The Petitioner appealed the denial through BCBSM's internal grievance process. BCBSM held a managerial-level conference on May 19, 2011, and issued a final adverse determination dated May 24, 2011.

III. ISSUE

Did BCBSM correctly deny coverage for Petitioner's hearing aids?

IV. ANALYSIS

BCBSM's Argument

In its final adverse determination, BCBSM denied coverage for Petitioner's hearing aids stating:

> You are covered under the *Community Blue Group Benefits Certificate*. Page 4.29 (*Section 4: Coverage for Physician and Other Professional Provider Services*) explains hearing aids or services to examine, prepare, fit or obtain hearing aids are not payable. Therefore, payment cannot be approved for the hearing aids. . . . You remain liable for the total charge.

Petitioner's Argument

Petitioner believes that the hearing aids should be covered because his hearing loss was caused by a drug used during his chemotherapy treatments. In his request for external review, the Petitioner states:

> Had to obtain hearing aids due to hearing loss related to oxaliplatin (chemotherapy). Blue Cross denial states "your coverage doesn't include benefits for routine vision or hearing services." Hearing loss isn't due to normal aging process.
>
> Hearing aids should be a benefit as this expense isn't due to routine causes.

The Petitioner's primary care physician stated that, in his opinion, the Petitioner's hearing loss is a result of the disease treatment. In a letter dated March 27, 2011, the Petitioner's oncologist explained the effects of Oxaloplatin on Petitioner:

> . . . His treatment course was complicated by oxaloplatin-induced peripheral neuropathy which increased numbness and tingling in his hands and feet bilaterally. His course was also complicated by another neuropathic-associated adverse effect with hearing loss related to oxaloplatin. His hearing loss deteriorated while on chemotherapy and to this day, he has decreased hearing acuity. Accordingly, I think he would benefit greatly from hearing aids.

Commissioner's Review

The certificate sets forth how benefits are paid. The certificate contains two references to hearing aids. On page 4.29, the certificate states:

> **Section 4: Coverage for Physician and Other Professional Providers**
> **Physician and Other Professional Provider Services That Are Not Payable**
>
> * * *
>
> - Hearing aids or services to examine, prepare, fit or obtain hearing aids.

On page 5.7, the certificate states:

> **Section 5: Coverage for Other Health Care Services**
>
> **Prosthetic and Orthotic Devices**
>
> **Devices and Services That Are Not Payable**
>
> - Some prosthetic and orthotic devices are not covered under your certificate. These include:
>
> * * *
>
> - Hearing aids

There is no question that the hearing aids are medically necessary. However, not all medically necessary devices and treatments are covered benefits under an insurance contract. In the present case, hearing aids are explicitly excluded from coverage, regardless of the cause of the hearing loss.

The Commissioner finds BCBSM's denial of coverage was consistent with the certificate language.

V. ORDER

Blue Cross Blue Shield of Michigan's final adverse determination of May 24, 2011, is upheld. BCBSM is not required to provide coverage for Petitioner's hearing aids.

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 in Michigan, 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.