

**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. 151847-001**

**Blue Cross Blue Shield of Michigan**  
**Respondent**

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**Issued and entered**  
**this 17<sup>th</sup> day of February 2016**  
**by Randall S. Gregg**  
**Special Deputy Director**

**ORDER**

**I. PROCEDURAL BACKGROUND**

On January 22, 2016, ██████████ (Petitioner), filed a request with the Director of Insurance and Financial Services for an external review under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* On January 29, 2016, after a preliminary review of the information submitted, the request was accepted.

At all times relevant to this review, the Petitioner was covered under a group plan underwritten by Blue Cross Blue Shield of Michigan (BCBSM). The benefits are defined in BCBSM's *Premier Silver Benefits Certificate*.

The Director notified BCBSM of the external review request and asked for the information used to make its adverse determination. The Director received BCBSM's response on February 5, 2016.

The issue in this external review can be decided by a contractual analysis. The Director 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 obstructive sleep apnea (OSA), a medical condition in which an individual's breathing stops or slows during sleep. He uses a device known as a CPAP machine to help him breathe more easily during sleep. CPAP is an acronym for "continuous positive airway pressure."

In the summer of 2015, after four years of use, his CPAP machine needed to be replaced. He rented a new machine from an approved BCBSM provider, The DME Source, LLC. On August 12, 2015, The DME Source submitted to BCBSM a claim for \$174.00. A second claim for \$160.00 was submitted on September 12, 2015. BCBSM's calculated its approved amount for the August 12 claim as \$124.04 with a coinsurance charge of \$51.95. BCBSM's approved amount for the September 12 claim was \$90.44 with a coinsurance charge of \$45.21.

On September 29, 2015, the Petitioner purchased a new CPAP machine and humidifier from The DME Source for \$1,162.86. BCBSM initially denied coverage but later approved the \$1,162.86 charge. BCBSM applied a 50 percent coinsurance charge and, paid the provider \$581.43.

The Petitioner appealed BCBSM's claim processing. At the conclusion of its internal appeal process, on January 4, 2016, BCBSM issued a final adverse determination affirming its decision. The Petitioner now seeks a review of that adverse determination from the Director.<sup>1</sup>

### III. ISSUE

Did BCBSM correctly process the claims for the Petitioner's CPAP machine and related supplies?

### IV. ANALYSIS

#### Petitioner's Argument

In a January 18, 2016 letter included with the request for external review, the Petitioner wrote:

BCBSM reversed its requirement that I must use their 10 month rent-to-own policy and agreed to purchase the CPAP machine during the 2015 plan year only after I appealed....BCBSM did not address all issues on appeal, or provide enough information to understand their final decision which was:

I am responsible for \$581.42 for co-insurance for all service dates

I am responsible for \$97.18 for August 12 and September 12, 2015 CPAP services

The most I should be charged for the 50% co-pay after BCBSM reversed its position and agreed to an outright purchase based on what BCBS allows should be no more than \$351.50....I should not be charged the \$97.18 installments because the CPAP should have been purchased outright from the start, resulting in one charge for my 50% co-pay....

#### BCBSM's Argument

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1. In his request for external review, the Petitioner presented a series of additional concerns which center on BCBSM's pricing practices and its requirement that members use only specific approved vendors when obtaining durable medical equipment such as CPAP machines. The Patient's Right to Independent Review Act only authorizes the Director to determine whether an insurer's claim decision is consistent with the terms of an insured's benefit plan. Because of these limitations, this review will only determine whether BCBSM claims decisions are consistent with the terms of the *Premier Silver Benefits Certificate*.

In its January 4, 2016, final adverse determination, BCBSM’s representative wrote:

After review, the claim for CPAP services received on September 29, 2015 was reprocessed and The DME Source LLC will be receiving payment of our approved amount shortly. You are only responsible for your contractually-obligated coinsurance requirement of \$581.42.

Also, after review, our decision is maintained and you remain responsible for your coinsurance requirement totaling \$97.18 for the claims for CPAP services you received on August 12, 2015 and September 12, 2015.

\* \* \*

I confirmed that your annual out-of-pocket maximum for covered in-network services was not satisfied on the referenced dates of service. Therefore, Blue Cross Blue Shield of Michigan (BCBSM) properly applied your 50 percent coinsurance requirement to the approved amount of the CPAP services you received.

In a February 5, 2016, email submitted for this external review, BCBSM explained how the September 29, 2015 claim for the purchase of a new CPAP machine and humidifier was processed:

[Petitioner’s] provider, The DME Source, LLC, submitted a third claim to BCBSM on September 29, 2015. This claim was for the *purchase of a new Auto CPAP Device*. The claim initially denied payment. [Petitioner] then submitted an internal appeal and included appropriate medical documentation. Our medical consultant reviewed the appeal and submitted documentation and determined the purchase of the equipment was medically appropriate. Based on that information, the claim was reprocessed to pay as follows:

PROCEDURE	CHARGE	ALLOWED AMOUNT	COINSURANCE
E0601 (CPAP)	\$1,500.00	\$903.51	\$451.75 (50%)
E0562 (humidifier)	\$350.00	\$259.35	\$129.67 (50%)

As explained in the Certificate, we will cover the rental fee only for the CPAP device and humidifier. Our total rental payments will not exceed our approved amount to purchase the device and humidifier. Once our rental payments equal the approved purchase price, you will own this equipment and no additional payments will be made by BCBSM for the device or humidifier.

BCBSM will normally only pay for the rental of a CPAP machine, not for the purchase. Our medical consultant determined medical necessity criteria was met for the purchase of this device. Therefore, at the internal appeal level, the claim was reprocessed and paid at the BCBSM approved amount. Although technically this claim was paid in error, BCBSM will not recall payment.

Because the services were durable medical equipment, and because [Petitioner’s] out-of-pocket maximum was not met, the 50 percent coinsurance applied appropriately to all three claims. Had [Petitioner] rented the equipment, a 50 percent coinsurance would have still been applied to those rentals. In addition, when the new year began (2016), the deductible would have also then applied.

Director's Review

The *Premier Silver Benefits Certificate* provides coverage for durable medical equipment (DME) such as CPAP machines. The certificate also requires that BCBSM members pay a 50 percent coinsurance charge for DME. Related supplies have a coinsurance charge of 20 percent. DME items may be rented or purchased, as described on page 30 of the certificate:

If the equipment is:

- Rented, we will not pay for the charges that exceed the BCBSM purchase price. Participating providers cannot bill the member when the total of the rental payments exceeds the BCBSM purchase price.
- Purchased, we will pay to have the equipment repaired and restored to use, but not for routine periodic maintenance

On August 12, 2015 and September 12, 2015, the Petitioner submitted claims for rental of CPAP equipment and the purchase of related supplies. BCBSM assessed the required coinsurance charges. On September 29, 2015 the Petitioner received a new CPAP machine and humidifier. Again, the required coinsurance was assessed.

The Petitioner actually received the CPAP devices, the first on a rental basis, and the second as a purchased item. The coinsurance charges assessed were consistent with the terms of the *Premier Silver Benefits Certificate*.

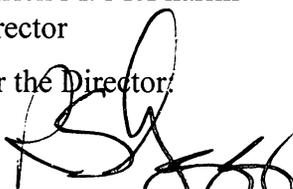
**V. ORDER**

The Director upholds BCBSM's final adverse determination of January 4, 2016.

This is a final decision of an administrative agency. 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 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:

  
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Randall S. Gregg  
Special Deputy Director