

4. During the course of her breast cancer treatment, the Appellant was referred to physical therapy several times for complaints of neuropathy. (Exhibit 1, Hearing Summary Memorandum)
5. On ██████████ the Appellant was discharged from physical therapy because she had met her goals. (Exhibit 1, Appendix D, page 4)
6. On ██████████ the Department discontinued the Appellant's Medicaid coverage through BCCCP based on the Physical Therapist's note. (Exhibit 1, Hearing Summary Memorandum)
7. On ██████████ the Appellant appealed the ██████████ termination. (Exhibit 1, Hearing Summary Memorandum)
8. In ██████████ the Department received a letter from the Appellant's podiatrist indicating the Appellant was receiving treatment for several conditions. The letter indicated the progressive thickening and deformity of nail plates was secondary to the previous chemotherapy and radiation treatment for breast cancer. The letter states the Appellant has also been treated for distal symmetrical, peripheral neuropathy, etiology possibly secondary to previous chemotherapy, chronic infracalcaneal bursitis with painful, plantar fasciitis and pes plano valgus involving the right foot. (Exhibit 1, Appendix E)
9. The Department reinstated the Appellant's BCCCP Medicaid for a six month time period and informed the Appellant re-evaluation would occur in ██████████ (Exhibit 1, Hearing Summary Memorandum)
10. On ██████████ the Appellant saw her podiatrist. In part, the doctor noted the Appellant was being evaluated and treated for painful calluses affecting the ████████ toes of both feet and continues to suffer from distal symmetrical peripheral neuropathy with the current questionable etiology of this problem. (Exhibit 1, Appendix A)
11. On ██████████ the Appellant saw her podiatrist. In part, the doctor noted the Appellant was being evaluated and treated for painful calluses affecting the ████████ toes of both feet as well as thick, neglected, deformed nail plates to bilateral feet. Again the doctor noted that the Appellant suffers from distal symmetrical peripheral neuropathy but the etiology is unknown. (Exhibit 1, Appendix F)
12. On ██████████, the Appellant's Medicaid through BCCCP was discontinued. (Exhibit 1, Hearing Summary Memorandum)
13. On ██████████, the Appellant's request for hearing was received. (Request for Hearing)

14. On [REDACTED] the Appellant's podiatrist wrote a letter stating the Appellant suffers from chronic painful onychocryptosis, onychogryphosis, hypertrophy, thickening, and deformity with evidence of incurvation with xerosis to plantar integument of bilateral feet. The doctor stated the etiology is possibly secondary to her previous treatment for breast cancer when she was administered chemotherapy and radiation. (Exhibit 2, Appendix A)

CONCLUSIONS OF LAW

The Medical Assistance Program is established pursuant to Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). It is administered in accordance with state statute, the Social Welfare Act, the Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program. The Department implements a Breast and Cervical Cancer Control Program (BCCCP). The Michigan Medicaid Provider Manual (MPM) outlines the eligibility criteria and services covered for the BCCCP:

2.1 BREAST AND CERVICAL CANCER CONTROL PROGRAM

2.1.A. ELIGIBLE BENEFICIARIES

The Breast and Cervical Cancer Control Program (BCCCP) covers uninsured low-income women of all ages, especially but not limited to, women aged 40-64. Certain income restrictions do apply.

- Insured women may apply if certain insurance, age, and income requirements are met.
- Women who are enrolled in a managed care program, health maintenance organization (HMO) or have Medicare Part B are not eligible.

2.1.B. COVERED SERVICES

Covered services include:

- Clinical breast exams
- Pap smears
- Pelvic exams
- Screening mammogram, and
- Appropriate referral to community providers for follow up of abnormalities.

Breast biopsy, colposcopy-directed services, colposcopy service, diagnostic mammograms, and loop electrosurgical excision procedure (LEEP) may be provided based upon medical needs, financial and insurance status, and availability of federal grant funds or Michigan tobacco tax dollars.

Medicaid Provider Manual,
Special Programs,
April 1, 2013, page 2.

The Centers for Medicare and Medicaid provide guidance about the BCCCP as follows:

The Breast and Cervical Cancer Prevention and Treatment Act of 2000

On October 24, 2000, the Breast and Cervical Cancer Prevention and Treatment Act of 2000 (Public Law 106-354) was signed into law. This Act, which has an effective date of October 1, 2000, gives states the option to provide medical assistance through Medicaid to eligible women who were screened through the Centers for Disease Control and Prevention's (CDC) National Breast and Cervical Cancer Early Detection Program (NBCCEDP) and found to have breast or cervical cancer, including pre-cancerous conditions.

Specifically, Public Law 106–354 of the 106th Congress provides:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Breast and Cervical Cancer Prevention and Treatment Act of 2000”.

SEC. 2. OPTIONAL MEDICAID COVERAGE OF CERTAIN BREAST OR CERVICAL CANCER PATIENTS.

(a) COVERAGE AS OPTIONAL CATEGORICALLY NEEDY GROUP. —

(1) IN GENERAL. —Section 1902(a)(10)(A)(ii) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(ii)) is amended—
(A) in subclause (XVI), by striking “or” at the end;
(B) in subclause (XVII), by adding “or” at the end; and
(C) by adding at the end the following:

(XVIII) who are described in subsection (aa)
(relating to certain breast or cervical cancer patients).

(2) GROUP DESCRIBED. —Section 1902 of the Social Security Act (42 U.S.C. 1396a) is amended by adding at the end the following:

(aa) Individuals described in this subsection are individuals who—

- (1) are not described in subsection (a)(10)(A)(i);
- (2) have not attained age 65;
- (3) have been screened for breast and cervical cancer under the Centers for Disease Control and Prevention breast and cervical cancer early detection program established under title XV of the Public Health Service Act (42 U.S.C. 300k et seq.) in accordance with the requirements of section 1504 of that Act (42 U.S.C. 300n) and need treatment for breast or cervical cancer; and
- (4) are not otherwise covered under creditable coverage, as defined in section 2701(c) of the Public Health Service Act (42 U.S.C. 300gg(c))

The Medicaid Breast and Cervical Cancer Prevention and Treatment Program (BCCPTP) policy specifically addresses duration of coverage:

III. Duration of Medicaid Coverage for BCCCP MTA Women

- A. A BCCCP MTA enrolled woman will receive full Medicaid benefits (beyond those required for breast or cervical cancer) as long as #1 and #2 are met:
 1. BCCCP age, income, insurance eligibility requirements **AND**
 2. Currently receiving breast or cervical cancer treatment and/or associated follow-up cancer care (beyond routine care, i.e. surveillance monitoring) according to the woman's health care provider.
- B. Breast or cervical cancer treatment is defined as the following:
 1. Breast or cervical cancer surgical procedures.
 2. Provision of chemotherapy/hormonal therapy/endocrine therapy to treat the breast or cervical cancer.

3. Provision of radiation therapy to treat the breast or cervical cancer.
4. Continued monitoring of side effects relating to the type of breast or cervical cancer therapy received by the woman.

(Exhibit B, page 2)

The Senior Nurse Consultant explained that the Appellant had been diagnosed with invasive breast cancer on ██████████, and was enrolled in Medicaid through BCCCP. The Appellant received chemotherapy, underwent a lumpectomy and then underwent radiation through ██████████. It was noted that the final dose of chemotherapy was reduced due to neuropathy the Appellant experienced in her hands and feet. (Exhibit 1, Hearing Summary Memorandum and Exhibit C, page 1)

The type of cancer the Appellant had requires close monitoring for two years post diagnosis and the Appellant's Medicaid was continued through BCCCP during this time. (Exhibit 1, Hearing Summary Memorandum)

During the course of her breast cancer treatment, the Appellant was referred to physical therapy several times for complaints of neuropathy. (Exhibit 1, Hearing Summary Memorandum) On ██████████, the Appellant was discharged from physical therapy because she had met her goals. (Exhibit 1, Appendix D, page 4)

Based on the Physical Therapist's note, the Department discontinued the Appellant's BCCCP Medicaid coverage on ██████████ (Exhibit 1, Hearing Summary Memorandum) On ██████████ the Appellant appealed the September 30, 2012 termination. (Exhibit 1, Hearing Summary Memorandum) In ██████████, the Department received a letter from the Appellant's podiatrist indicating the Appellant was receiving treatment for several conditions. The letter indicated the progressive thickening and deformity of nail plates was secondary to the previous chemotherapy and radiation treatment for breast cancer. The letter states the Appellant has also been treated for distal symmetrical, peripheral neuropathy, etiology possibly secondary to previous chemotherapy, chronic infracalcaneal bursitis with painful, plantar fasciitis and pes plano valgus involving the right foot. (Exhibit 1, Appendix E) The Department reinstated the Appellant's Medicaid through BCCCP for a six month time period and informed the Appellant re-evaluation would occur in ██████████ (Exhibit 1, Hearing Summary Memorandum)

On ██████████ the Appellant saw her podiatrist. In part, the doctor noted the Appellant was being evaluated and treated for painful calluses affecting the ████████ toes of both feet and continues to suffer from distal symmetrical peripheral neuropathy with the current questionable etiology of this problem. (Exhibit 1, Appendix A) On ██████████ the Appellant saw her podiatrist. In part, the doctor noted the Appellant was being evaluated and treated for painful calluses affecting the ████████ toes of both feet as well as thick, neglected, deformed nail plates to bilateral feet. Again the doctor noted that the

Appellant suffers from distal symmetrical peripheral neuropathy but the etiology is unknown. (Exhibit 1, Appendix F)

The Appellant's Medicaid through BCCCP was discontinued on ██████████. A third extension could not be granted because the Appellant was no longer receiving breast cancer treatment based on the available information. Specifically the note from the provider indicated the peripheral neuropathy was of unknown etiology. Accordingly, the Appellant's Medicaid coverage through BCCCP was terminated. (Exhibit 1, Hearing Summary Memorandum; Senior Nurse Consultant Testimony)

The Appellant disagrees with the termination provided detailed information regarding the course of the treatment for breast cancer and side effects from the breast cancer treatment. The Appellant had multiple courses of physical therapy. The Appellant stated she went to physical therapy too soon in the beginning; therefore she did not get much benefit from the early referrals. The Appellant asserts that she has plantar fasciitis from the physical therapy. The Appellant got plantar fasciitis in her right foot, paid ██████ for orthotics, and continues to wear the orthotics. The Appellant stated is still having problems with bad stiffness in her feet, however, the Appellant also testified that the plantar fasciitis is much better now. (Appellant Testimony; Exhibit A)

The Appellant explained that she had thought the damage to her toe nails from the chemotherapy treatment was permanent and had not realized she needed to see a foot doctor. Accordingly, the Appellant did not start seeing the podiatrist until ██████. The Appellant stated that the podiatrist is not really treating her for peripheral neuropathy; rather he is continuing to treat a fungal infection in her toenails. This will be a long process, ██████ or ██████ years. The Appellant indicated the treatment for the fungal infection involves cutting the nails and applying ointment. The Appellant stated that even with long treatment, the fungal infection could still come back. The Appellant also noted that when her coverage was previously stopped, there was a gap in treatment because the coverage was not put back on for several months. The Appellant also asserted that most ingrown toenails are from fungus because nails do not grow that way naturally. The Appellant was the top Petitioner in the ██████████ which required being on her feet all day. The Appellant never wanted to be on disability, so she never applied for it because she wants to work again. The Appellant asserts that a woman's coverage cannot just be cut off and indicated she would like breast reconstruction surgery. (Appellant Testimony; Exhibit A)

This ALJ does not have any authority to review whether or not the Appellant can have breast reconstruction surgery. Rather, the scope of this hearing is limited to reviewing whether or not the Department properly discontinued the Appellant's BCCCP Medicaid coverage. The Department must implement its programs in accordance to federal law, state law and Department policy. This Administrative Law Judge is also bound by federal law, state law, and Department policy. This ALJ has no equitable jurisdiction and cannot order the Department to provide programs and services, including Medicaid, to an individual who is not eligible for those services.

It is noted that the Department did not abruptly cut off the Appellant's BCCCP Medicaid coverage when the breast cancer treatment ended in [REDACTED] after the chemotherapy, lumpectomy and radiation were completed. Rather, the Department understood that due to the type of breast cancer the Appellant had, close monitoring would be necessary for two years post diagnosis and the Appellant was continued on the BCCCP Medicaid during this time. An additional extension was also granted in [REDACTED] when the Department first learned the Appellant was seeing a podiatrist for several conditions, some of which were documented as secondary to the previous breast cancer treatment. (Exhibit 1, Hearing Summary Memorandum and Appendix E) However, the podiatrist's subsequent documentation from [REDACTED] and [REDACTED], does not establish that the conditions the Appellant continues to suffer from resulted from the previous breast cancer treatment. The [REDACTED] and [REDACTED] office visit notes do not mention that any of the listed conditions the Appellant was being treated for were caused by the prior breast cancer treatment. Further, these notes indicate the etiology of the peripheral neuropathy is unknown. (Exhibit 1, Appendices A and F) In the [REDACTED] letter, the podiatrist listed the conditions the Appellant is presently suffering from and states "this etiology is possibly secondary to her previous treatment for breast cancer where she was administered chemotherapy and radiation." (Exhibit 2, Appendix A, underline added by ALJ) This is not sufficient to establish that the Appellant is continuing to receive treatment for breast cancer or treatment for side effects from her previous breast cancer treatment. The Department submitted sufficient credible evidence that it terminated the Appellant's BCCCP Medicaid coverage in accordance with federal law and Department policy. Accordingly, the Appellant is no longer eligible for Medicaid through BCCCP.

DECISION AND ORDER

This Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly terminated the Appellant's eligibility for BCCCP Medicaid.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

/s/
Colleen Lack
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

[REDACTED]
Docket No. 2013-60822 BCC
Decision and Order

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[REDACTED]

***** NOTICE *****

The Michigan Administrative Hearing System may order a rehearing on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. The Michigan Administrative Hearing System will not order a rehearing on the Department's motion where the final decision or rehearing cannot be implemented within 90 days of the filing of the original request. The Appellant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt of the rehearing decision.