STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

[redacted],

Appellant
_____/

Docket No. 2009-15991 PA
Case No [redacted]
Load No. [redacted]

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ) pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on [redacted]. [redacted], clinical psychologist, represented the Appellant at hearing. The Appellant was present and did testify on his own behalf. [redacted] was present and testified on behalf of the Appellant. [redacted], was present and testified on behalf of the Appellant.

[redacted] represented the Medicaid Health Plan, a Department of Community Health contracted provider. (hereinafter the Department or the Health plan). Also present as a witness on behalf of the Department was [redacted].

ISSUE

Did the Medicaid Health Plan properly deny Appellant's request for Vagus Nerve Stimulation Therapy to treat his depression?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Appellant is a Medicaid beneficiary seeking treatment for depression.

2. The MHP has received numerous requests for implantation of a Vagus Nerve Stimulator (VNS) from Appellant's physician/psychiatrist.

3. Each request for prior authorization of the procedure has been denied. The most recent request was made on or about [redacted]. A denial followed.

4. The prior authorization (PA) request from Appellant's psychiatrist states in pertinent part that the Appellant has had multiple unsuccessful attempts at drug therapy and suffers from recurrent and persistent depression. The prior authorization request further states the Appellant has had several hospitalizations for severe depressive episodes and suicidal ideations.

5. Testimony directly from the Appellant at hearing does not establish he has had multiple hospitalizations for severe depressive episodes and suicidal ideations.

6. The Centers for Medicare and Medicaid Services (CMS) does not find VNS therapy a reasonable and necessary treatment for depression.

7. On [redacted], the State Office of Administrative Hearings and Rules received Appellant's hearing request, protesting the denial.

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.

On May 30, 1997, the Department received approval from the Health Care Financing Administration, U.S. Department of Health and Human Services, allowing Michigan to restrict Medicaid beneficiaries' choice to obtain medical services only from specified Medicaid Health Plans.

The Respondent is one of those Medicaid Health Plans.

> The covered services that the Contractor has available for enrollees must include, at a minimum, the covered services listed below (List omitted by Administrative Law Judge). The Contractor may limit services to those which are medically necessary and appropriate, and which conform to professionally accepted standards of care. Contractors must operate consistent with all applicable Medicaid provider

> manuals and publications for coverages and limitations. If new services are added to the Michigan Medicaid Program, or if services are expanded, eliminated, or otherwise changed, the Contractor must implement the changes consistent with State direction in accordance with the provisions of Contract Section 1-Z.
>
> *Article II-G, Scope of Comprehensive Benefit Package. MDCH contract (Contract) with the Medicaid Health Plans, September 30, 2004.*

> The major components of the Contractor's utilization management plan must encompass, at a minimum, the following:
>
> - Written policies with review decision criteria and procedures that conform to managed health care industry standards and processes.
> - A formal utilization review committee directed by the Contractor's medical director to oversee the utilization review process.
> - Sufficient resources to regularly review the effectiveness of the utilization review process and to make changes to the process as needed.
> - An annual review and reporting of utilization review activities and outcomes/interventions from the review.
>
> The Contractor must establish and use a written prior approval policy and procedure for utilization management purposes. The Contractor may not use such policies and procedures to avoid providing medically necessary services within the coverages established under the Contract. The policy must ensure that the review criteria for authorization decisions are applied consistently and require that the reviewer consult with the requesting provider when appropriate. The policy must also require that utilization management decisions be made by a health care professional who has appropriate clinical expertise regarding the service under review.
>
> *Article II-P, Utilization Management, Contract, September 30, 2004.*

Fee-for-service Medicaid beneficiaries are subject to the prior approval process found in the Medicaid Provider Manual. MHP beneficiaries are entitled to the same benefits as fee-for-service Medicaid beneficiaries. Thus, MHP beneficiaries may not be denied a

service that would otherwise be provided a fee-for-service beneficiary, assuming Medicaid Provider Manual criterion has been satisfied.

The Appellant has a long history of major depression, and has been on numerous medications which include antidepressants. He reports no positive benefit from the trials of the medications. He seeks VNS therapy asserting it is medically necessary. According to Appellant's psychiatrist, previous therapies to treat Appellant's "recurrent, severe" depression have proven to be unsuccessful, and he asserts that VNS Therapy offers the best chance to improve the Appellant's severe depression. Furthermore, he asserts it is FDA approved treatment.

The MHP denied the Appellants request for VNS therapy on the basis that it is not covered through Michigan Medicaid and the fact it is a FDA approved treatment does not render it medically necessary or efficacious. The MHP pointed to the CMS manual stating providers would not be paid for VNS for resistant depression. The controlling authority provides:

Medicaid beneficiaries are entitled to medically necessary Medicaid covered services for which they are eligible. Services must be provided in the appropriate scope, duration, and intensity to reasonably achieve the purpose of the covered service. (42 CFR 440.230) The MDCH Medicaid Provider Manual, General Information/Practitioner Section, April 1, 2007, page 1 states the following:

> *Generally, **medically necessary services** provided to a Medicaid beneficiary by an enrolled practitioner are covered*.

As stated above, Medicaid covers medically necessary services provided by an enrolled provider. In this case, controlling weight was given to the MHP's substantial evidence which clearly establishes that VNS therapy for resistant depression is not covered in accordance with CMS guidelines. The claim that it is an approved treatment by the FDA does not persuade this ALJ to disregard the fact that that the Centers for Medicare and Medicaid Services does not provide coverage for use of this therapy for the Appellant's condition, finding it is not reasonable and necessary.

Additionally, review of the evidence in the record does not establish the treatment sought is medically necessary. The psychiatrist's claim of multiple hospitalizations for severe depressive episodes and suicidal ideations was not supported by direct testimony from the Appellant himself. The testimony about the number of relatively recent hospitalizations, within the last 5-10 years, established a trip to the emergency room which may have lasted overnight and an admission for the purpose of a treatment. The evidence of record did not establish multiple in-patient hospitalizations resultant from either suicidal ideation or severe depressive episodes. The written assertion from the psychiatrist of such is unsubstantiated, resulting in damaged credibility. Persuasive or controlling effect is not given to evidence offered from the Appellant's medical provider as a result. The Appellant did not establish the treatment sought is medically

necessary.

This Administrative Law Judge must uphold the Department's denial of Appellant's request for the reason that VNS Therapy for resistant depression is not a Medicaid-covered service.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly denied Appellant's request for VNS Therapy for his resistant depression.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

Jennifer Isiogu
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: 5/15/2009

***** NOTICE *****

The State Office of Administrative Hearings and Rules 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 State Office of Administrative Hearings and Rules 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.