STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P.O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

[redacted],

Appellant
_____/

Docket No. 2009-22121 QHP
Case No. [redacted]
Load No. [redacted]

DECISION AND ORDER

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

After due notice, a hearing was held on [redacted]. [redacted] appeared as Authorized Representative for [redacted] (Appellant).

[redacted], appeared on behalf of [redacted] ('Medicaid Health Plan', or 'MHP'). Also appearing as witnesses for the MHP were [redacted], and [redacted].

ISSUE

Did the Medicaid Health Plan properly deny the Appellant's request for the medication, Kuvan?

FINDINGS OF FACT

Based upon the competent, material and substantial evidence presented, I find, as material fact:

1. Appellant is a minor Medicaid beneficiary, who is currently enrolled with Health Plan of Michigan, a Medicaid health plan. He is diagnosed with Phenylketonuria (PKU). *(Exhibit 1; p. 14)*

2. On [redacted], the Appellant was issued an Adequate Action Notice denying his request for Kuvan tablet, a medication used to treat tetrahydrobioterin responsive PKU. *(Exhibit 1; p. 9)*

3. On [redacted], the Appellant, by and through his mother/guardian, filed an internal appeal of the denial with the MHP. On [redacted], the MHP upheld the

denial, stating as a reason, the following:

"The clinical information reveals that the member's growth shows no signs of regression (going backwards in his development) and he is developmentally age appropriate. The notes indicate that the family is non-compliant (not following physician orders) with home monitoring and diet restrictions. These are standard treatment avenues and should be fully maximized prior to consideration for coverage of this medication. In addition, there must be clinical evidence that the member is physically affected or is at significant risk for being physically affected without active pharmacological treatment (treatment with medication such as Kuvan). (Exhibit 1; p. 12)

4. On [redacted], the Appellant was treated at [redacted]. Under the topic heading, "Discussion", [redacted] and [redacted], articulate the following comments:

"With [redacted] we reviewed [redacted] home monitoring record since his last visit here. [redacted] needs to complete weekly home monitoring with diet records as previously requested. We have not received multiple home monitoring specimens that we requested since we last saw him. All of [redacted] phenylalanine levels are elevated highly above the recommended goal range. We reviewed that [redacted] levels have been greatly elevated for the past year despite our interventions. The long duration and the high degree of phenylalanine level elevation cannot be explained by illnesses or exposure to new foods at school. [redacted] has not adequately monitored his phenylalanine intake in order to adjust intake to lower phenylalanine levels. We discussed with [redacted] that she needs to carefully monitor [redacted] intake over the next month and that we will be requesting weekly home monitoring samples to monitor his phe levels. We provided her with a schedule in which we expect an improvement each week in his phe levels so that they will eventually be in the recommended range. We discussed that if [redacted] is unwilling or unable to bring [redacted] phe levels into the recommended range, we will file a report with CPS for medical neglect. The nurse practitioner or dietitian will phone [redacted] and give her guidelines for lowering levels once [redacted] phenylalanine level from this clinic visit is received. [redacted] expressed understanding of our concern and agreed with the plan. [redacted] requested contact information from another parent of a child with PKU [redacted] age and this will be provided to her."

(Exhibit 1; pp. 17-18)

5. On [redacted], the Appellant's mother filed a Request for Hearing with the State Office of Administrative Hearings and Rules for the Department of Community Health.

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

1.10 NONCOVERED ITEMS

Items that are not covered by Medicaid include, but are not limited to:

- Adaptive equipment (e.g., rocker knife, swivel spoon, etc.)
- Air conditioner
- Air purifier
- Enteral formulae to accommodate psychological or behavioral conditions, food preferences, allergies, loss of appetite, or noncompliance with a specialized diet
- Environmental Control Units
- Equipment not used or not used properly by the beneficiary
- Exam tables/massage tables
- Exercise equipment (e.g., tricycles, exercise bikes, weights, mat/mat tables, etc.)
- Generators
- Hand/body wash
- Heating pads
- Home modifications
- Hot tubs
- House/room humidifier
- Ice packs
- *Items for a beneficiary who is non-compliant with a physician's plan of care (or) items ordered for the purpose of solving problems related to noncompliance (e.g., insulin pump) (Emphasis supplied by ALJ)*

- Items used solely for the purpose of restraining the beneficiary for behavioral or other reasons
- Lift chairs, reclining chairs, vibrating chairs
- More than one pair of shoes on the same date of service
- New equipment when current equipment can be modified to accommodate growth
- Nutritional formulae representing only a liquid form of food
- Nutritional puddings/bars
- Over-the-counter shoe inserts
- Peri-wash
- Portable oxygen, when oxygen is ordered to be used at night only
- Power tilt-in-space or reclining wheelchairs for a long-term care resident because there is limited staffing
- Pressure gradient garments for maternity-related edema
- Prosthetic appliances for a beneficiary with a potential functional level of K0
- Regular or dietetic foods (e.g., Slimfast, Carnation instant breakfast, etc.)
- Room dehumidifiers
- School Items (e.g., computers, writing aids, book holder, mouse emulator, etc.)
- Second units for school use
- Second wheelchair for beneficiary preference or convenience
- Sensory Devices (e.g., games, toys, etc.)
- Sports drinks/juices
- Stair lifts
- Standard infant/toddler formulae
- Therapy modalities (bolsters, physio-rolls, therapy balls, jett mobile)
- Thickeners for foods or liquids (e.g., Thick – it)
- Toothettes
- Transcutaneous Nerve Stimulator when prescribed for headaches, visceral abdominal pain, pelvic pain, or temporal mandibular joint (TMJ) pain
- Ultrasonic osteogenesis stimulators
- UV lighting for Seasonal Affective Disorder
- Vacu-brush toothbrushes
- Weight loss or "light" products
- Wheelchair lifts or ramps for home or vehicle (all types)
- Wheelchair accessories (e.g., horns, lights, bags, special colors, etc.)
- Wigs for hair loss

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A Medicaid beneficiary bears the burden of proving he or she was denied a medically necessary and appropriate service. See, e.g., *J.K By and Through R.K. v Dillenberg*, 836 F Supp 694, 700 (Ariz, 1993). Whether the Appellant satisfied that burden here must be determined in accord with the preponderance of the evidence standard. See, e.g., *Aquilina v General Motors Corp*, 403 Mich 206, 210; 267 NW2d 923 (1978).

Regarding an appeal filed with the State Office of Administrative Hearing and Rules for the Department of Community Health, the Administrative Law Judge is given ultimate discretion to determine the weight and credibility of the evidence presented. *Wiley v Henry Ford Cottage Hosp*, 257 Mich App 488, 491; 668 NW2d 402 (2003); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996) (the fact finder is provided with the unique opportunity to observe or listen to witnesses; and, it is the fact finder's responsibility to determine the credibility and weight of the testimony and other evidence provided).

The Appellant's mother testified that, within the last two months, she has exercised greater caution in monitoring the Appellant's diet. However, she claims she is not neglecting her child and that the physicians at [redacted] appear to be working against her.

The MHP credibly testified that, according to the medical documentation presented in support of the request for Kuvan, medical necessity has not been established, as it is yet unclear whether the preferred method of addressing and treating PKU (diet) has been unsuccessful.

The preponderance of the evidence presented supports a conclusion that the Appellant has failed to establish medical necessity for Kuvan at this time.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, I decide that the MHP appropriately denied Appellant's prior authorization request for Kuvan.

IT IS THEREFORE ORDERED that:

The Medicaid Health Plan's decision is AFFIRMED.

Stephen B. Goldstein
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc: [redacted]

[redacted]
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Date Mailed: 7/14/2009

***** 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 mailing date of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the mailing date of the rehearing decision.