STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH
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(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

[redacted]

Appellant
_____/

Docket No. 2009-32952 QHP
Case 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.,* upon the Appellant's request for a hearing.

After due notice, a hearing was held on [redacted]. [redacted] (Appellant) appeared and testified on his own behalf. [redacted], General Counsel, represented [redacted] (the MHP). [redacted], RN/Case Manager, testified as a witness for the MHP.

ISSUE

Did the Medicaid Health Plan properly deny Appellant's request for Limbrel?

FINDINGS OF FACT

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

1. Appellant is a Medicaid beneficiary enrolled in the MHP.

2. On [redacted], the MHP received a prior authorization request from Appellant's doctor for the approval of Limbrel for more than [redacted] to treat Appellant's pain. (ALJ I)

3. Appellant was diagnosed with cervical myelopathy, status post neurosurgery nine years ago, chronic pain syndrome, degenerative disc disease of the lumbar spine, and multiple arthropathies in the upper and lower extremities. (ALJ I, p. 3)

4. Appellant's medical doctor indicated in the prior authorization request that Appellant has tried Motrin, Naprosyn, and Gabapentin with little decrease in pain. (ALJ I)

5. The MHP's Medical Director reviewed the request and determined that it could not be approved on the basis that Limbrel "lacks the scope of FDA-approved studies required of chemical entities, and the resultant safety and efficacy data to support its use in this dietary supplemental manner." (ALJ II)

6. Appellant received notice that his prior authorization request for Limbrel was denied by the MHP.

7. On [redacted], the State Office of Administrative Hearings and Rules received Appellant's hearing request, protesting the denial of Limbrel and expressing his dissatisfaction with the MHP.

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.*

The Department's Medicaid Provider Manual, Pharmacy section, July 1, 2009, states:

> A PA (prior authorization) is denied if:

- The medical necessity is not established.
- Alternative medications are not ruled out.
- Evidence-based research and compendia does not support it.
- It is contraindicated, inappropriate standard of care,
- It does not fall within MDCH clinical review criteria.
- Documentation required was not provided.

In this case, Appellant is protesting the denial of Limbrel. Appellant was diagnosed with cervical myelopathy, status post neurosurgery nine years ago, chronic pain syndrome, degenerative disc disease of the lumbar spine, and multiple arthropathies in the upper and lower extremities.

The DCH-MHP contract provisions does allow prior approval procedures for medications not included on the MHP Drug Formulary when medically necessary, and when formulary alternatives have demonstrated ineffectiveness. As stated above, the health plan may limit services or supplies to those which are medically necessary and appropriate, and which conform to professionally accepted standards of care.

The MHP's denial of Appellant's request for Limbrel must be upheld. Limbrel is not included on the MHP's Drug Formulary, and Appellant failed to establish that Limbrel has any therapeutic value to the treatment of his chronic pain. According to the online consumer drug information and current literature, Limbrel is a prescription medical food product for daily nutritional management of the metabolic aspects of osteoarthritis. It is not a drug or a dietary supplement that specifically addresses the symptoms of a disease or the treatment or prevention of the disease. Appellant failed to meet his burden of establishing that Limbrel is medically necessary to treat his chronic pain, cervical myelopathy, degenerative disc disease of the lumbar spine, and multiple arthropathies.

Appellant made it clear that he feels his primary care physician from his MHP is not treating his medical condition properly, and he is being discriminated against because of his race and gender. However, these are issues that cannot be resolved through the administrative hearings process. This State Office of Administrative Hearings and Rules only has jurisdiction if there has been a denial, suspension, reduction or termination of a Medicaid covered service or benefit. The MHP witness testified that there are MHP Case Managers who can assist Appellant with his issues regarding his health care.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the MHP properly denied Appellant's request for Limbrel.

IT IS THEREFORE ORDERED that:

The Medicaid Health Plan's decision is AFFIRMED.

Marya A. Nelson-Davis
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: 10/28/2009

***** 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.