

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH
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IN THE MATTER OF:

_____,
Appellant
_____ /

Docket No. 2009-5552 ABW
Case No. _____
Load No. _____

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 _____, _____ appeared as Authorized Representative for _____

_____ appeared on behalf of _____, the Department of Community Health Pharmacy Benefits Manager (hereafter, "Department").

ISSUE

Did the Department properly deny the Appellant's request for Provigil?

FINDINGS OF FACT

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

1. Appellant is enrolled in the Adult Benefit Waiver (ABW) program.
2. On _____, _____ clinical staff received a request for a prior authorization from _____. _____, a Family Practice physician, requested coverage approval for Provigil. The diagnosis provided was obstructive sleep apnea (OSA) and daytime hypersomnolence. (*Exhibit 1; p. 3*)
3. _____ noted in his request that the Appellant had not had a sleep study since his medical plan denied coverage for this procedure. The Appellant has not

appealed the denial(s) to the health plan.

4. Because [REDACTED] could not be provided a sleep study, it referred the matter to a Departmental Physician Reviewer, who subsequently denied the request for Provigil.
5. On [REDACTED] the Appellant filed his 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 January 16, 2004, the federal Department of Health and Human Services, Centers for Medicare and Medicaid Services, approved the Adult Benefit Waiver to permit the state to use state funds and funds authorized under Title XXI of the Social Security Act to provide coverage to uninsured adults who were not otherwise eligible for Medicaid or Medicare. The new program utilizes the Medicaid provider network and County-Administered Health Plans (CHPs) as managed care providers.

The Adult Benefits Waiver (ABW) provides health care benefits for Michigan's childless adult residents (age 18 through 64) with an annual income at or below 35 percent of the Federal Poverty Level (FPL).

Covered services and maximum co-payments for beneficiaries in this eligibility category are detailed in the following sections. Unless noted in Medicaid provider-specific chapters, service coverage and authorization requirements for the fee-for-service (FFS) beneficiaries enrolled in the ABW program mirror those required for Medicaid. Only those providers enrolled to provide services through the Michigan Medicaid Program may provide services for FFS ABW beneficiaries.

The pharmacy benefits portion of the Appellant's ABW coverage provides, in relevant part, as follows:

SECTION 1: GENERAL INFORMATION

Michigan Department of Community Health (MDCH) administers the fee-for-service (FFS) programs for Medicaid, Children's Special Health Care Services (CSHCS), Maternity Outpatient Medical Services (MOMS), and Adult Benefits Waiver (ABW), and Plan First!. This chapter and the Michigan Pharmaceutical Product List (MPPL) comprise program policies and explain coverage and reimbursement for the services dispensed and billed by enrolled pharmacies.

Throughout this chapter the terms Medicaid and MDCH are used to refer to the Michigan Medicaid FFS, CSHCS, MOMS, ABW, and Plan First! programs unless otherwise noted.

1.1 MDCH PHARMACY BENEFITS MANAGER AND OTHER VENDOR CONTRACTORS

MDCH retains all decisions for policy, coverage, and reimbursement. However, MDCH contracts with [REDACTED] as its pharmacy benefits manager (PBM). PBM services provided include pharmacy claims payment (paper and electronic), claims instruction, prior authorization (PA), prospective drug utilization, retrospective drug utilization, clinical consultation, provider enrollment, provider information lines, and provider audits. (Refer to the Directory Appendix for PBM contact information.)

The PBM website contains the:

- Pharmacy Claims Processing Manual for Michigan Medicaid
- Michigan Pharmaceutical Product List (MPPL)
- Preferred Drug List (PDL)
- Drug Utilization Review (DUR) Meeting Notices
- Dose Optimization Program
- Pharmacy and Therapeutics (P&T) Committee Meeting Notices
- Pharmacy Forms
- Maintenance Drug List

Pharmacies may call the PBM for questions or concerns. Beneficiaries may call the PBM Beneficiary Helpline. (Refer to the Directory Appendix for contact information.)

MDCH contracts with other vendors to perform financial, program or provider audits on behalf of the State of Michigan. (Refer to the Pharmacy Resources portion of the Directory Appendix for additional information.)

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A preponderance of the evidence presented supports a conclusion that the Appellant has failed to submit the results of a sleep study. For reasons not entirely clear on this record, the Appellant's County Health Plan (CHP) has denied coverage for the sleep study. There is no evidence the Appellant has appealed this denial. This State Office of Administrative Hearings and Rules for the Department of Community Health has no jurisdiction over the issue unless a formal appeal is brought under separate request for hearing, within Federal timeframes.

The Department asserts it cannot effectively approve coverage of Provigil until it has the results

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of a sleep study. The Department contends that, if the study confirms obstructive sleep apnea, then the medication may be covered. The Department indicated the prior authorization process derives from its ability to render prospective and retrospective medication utilization management decisions, in an effort to provide the most cost-effective treatment.

[REDACTED] voiced his concern over the Appellant's inability, because of coverage issues, to obtain a sleep study. He opined that Provigil will be beneficial to the Appellant, but otherwise presented no legally significant challenge to the Department's assertion that coverage criteria has not yet been satisfied.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, I decide that the Department's denial of the Appellant's [REDACTED] request for Provigil is appropriate, as in accord with current pharmacy benefits policy.

IT IS THEREFORE ORDERED that:

The Department's denial is AFFIRMED.

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

cc:

[REDACTED]

Date Mailed: 2/24/2009

***** NOTICE *****

The State Office of Administrative Hearings and Rules for the Department of Community Health 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 for the Department of Community Health 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.

[REDACTED]

[REDACTED]

[REDACTED]