

**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. 2009-5548 QHP
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.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. ██████████ (Appellant) appeared and testified on her own behalf.

██████████ represented ██████████ the Medicaid Health Plan (the MHP); and ██████████, testified as a witness for the MHP.

ISSUE

Did the Medicaid Health Plan properly deny Appellant's request for Soma and Zetia?

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 ██████████, the MHP received a prior authorization request from Appellant's doctor for the approval of Soma and Zetia for Appellant who was diagnosed with fibromyalgia, low back pain, insomnia, and high cholesterol. (Exhibit 1, pp. 5 & 6)

3. On [REDACTED], the MHP Pharmacy Manager reviewed the request and determined that she could not approve the request for Soma and Zetia due to "Lack of information." (Exhibit 1, pp. 5 & 6)
4. On [REDACTED], the MHP notified Appellant in writing that it could not approve her request for Soma and Zetia because her doctor failed to respond to the MHP's request for records showing Appellant's use of Soma, Zetia, and other medications; and the medications are not listed in the Plan Preferred Drug Listing. (Exhibit 1, pp. 7-12)
5. On [REDACTED], the State Office of Administrative Hearings and Rules received Appellant's hearing request, protesting the denial of Soma and Zetia.
6. On [REDACTED], the MHP Medical Director reviewed the request and determined that coverage is not available for Soma and Zetia.
7. On [REDACTED] the MHP notified Appellant in writing that its appeal committee reviewed her appeal for coverage of the requested medications, and her appeal was denied because Soma and Zetia are not on the Plan Prescription Drug Listing. (Exhibit 1, pp. 17-20)

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.*

In this case, Appellant is protesting the denial of Soma and Zetia. Appellant stated that she has used these medications for years. However, the MHP provided documentation to establish that Soma and Zetia are not included on the MHP's Drug Formulary. 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. The MHP witness testified that there are formulary alternatives to Soma and Zetia available, and Appellant's doctor failed to

respond to its request for documentation of why the formulary alternatives cannot be used. 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. Additionally, the medical services or supplies requested must be the most cost-effective treatment available. The MHP established that its prior approval process for Soma and Zetia is consistent with the Medicaid policy.

Appellant failed to establish by a preponderance of evidence that she meets the medical necessity criteria for Soma and Zetia. Neither Appellant nor her physician submitted documentation to establish that the formulary alternatives to Soma and Zetia have been tried by Appellant, without success, nor was there an explanation of why the formulary alternatives cannot be used. Therefore, this Administrative Law Judge must uphold the denial.

DECISION AND ORDER

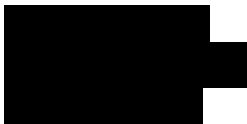
The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the MHP properly denied Appellant's request for Soma and Zetia.

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:



Date Mailed: 2/10/2009

***** 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.