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

[redacted],

Appellant
_____/

Docket No. 2010-13181 QHP
Case 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.*, following the Appellant's request for a hearing.

After due notice, a hearing was held [redacted]. The Appellant represented herself at hearing.

[redacted] was represented by [redacted]. [redacted], was present and provided testimony. [redacted], was present on behalf of the MHP.

ISSUE

Did the Plan properly deny the Appellant's request for in home oxygen therapy?

FINDINGS OF FACT

Based upon the competent, material and substantial evidence presented, the Administrative Law Judge finds as material fact:

1. The Appellant is a [redacted] Medicaid beneficiary. (uncontested)

2. The Appellant has headaches, for which she has sought treatment.

3. The Appellant has been prescribed multiple medications in an attempt to alleviate the headache pain. She has reported no success with the medications tried thus far.

4. The Appellant's physician requested prior authorization for in home oxygen therapy in an attempt to treat the headaches.

5. The Medical Director for the MHP reviewed the request for prior authorization and denied it on [redacted], citing lack of clinical documentation of traditional methods of treating headache pain and lack of sufficient clinical documentation of a cluster headache diagnosis.

6. Thereafter, on [redacted], the Appellant's physician submitted correspondence attesting to the failure of several prescriptions and alluding to discussion of the Appellant's medical status with a neurologist.

7. The MHP's Medical Director again reviewed the documentation submitted and determined that a full neurological consultation was appropriate before prior authorization for in home oxygen therapy was approved.

8. The Appellant's primary care physician's office was notified that a referral to a neurologist was recommended as the best course for the Appellant and before prior authorization for in home oxygen therapy could be approved.

9. The Appellant appealed the denial on or about [redacted].

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. (Bold emphasis added).
>
> *Article II-G, Scope of Comprehensive Benefit Package. MDCH contract (Contract) with the Medicaid Health Plans, September 30, 2004, Page 30.*

As it says in the above Department - MHP contract language, a MHP such as [redacted] may limit services to those that are medically necessary and that are consistent with applicable Medicaid Provider Manuals. It may require prior authorization for certain procedures. The process must be consistent with the Medicaid Provider Manual. The pertinent sections of the Medicaid Provider Manual criteria for prior authorization and Medical Necessity are below:

> **1.10 PRIOR AUTHORIZATION**
> Medicaid requires prior authorization (PA) to cover certain services before those services are rendered to the beneficiary. The purpose of PA is to review the medical need for certain services. It does not serve as an authorization of fees or beneficiary eligibility. Different types of services requiring PA include:
>
> - Procedures identified as requiring PA on the procedure code databases on the MDCH website;
> - Procedures/items that are normally noncovered but may be medically necessary for select beneficiaries (e.g., surgery normally cosmetic in nature, obesity surgery, off-label use drugs, etc.); and
> - Referrals for elective services by out-of-state nonenrolled providers.
>
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> Version Practitioner
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> **1.5 MEDICAL NECESSITY**
> Services are covered if they are the most cost-effective treatment available and meet the Standards of Coverage stated in the Coverage Conditions and Requirements Section of this chapter.
>
> A service is determined to be medically necessary if prescribed by a physician and it is:

- Within applicable federal and state laws, rules, regulations, and MDCH promulgated policies.
- Medically appropriate and necessary to treat a specific medical diagnosis or medical condition, or functional need.
- Within accepted medical standards; practice guidelines related to type, frequency, and duration of treatment; and within scope of current medical practice.
- Inappropriate to use a nonmedical item.
- The most cost effective treatment available.

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The MHP stated the denial was based upon lack of follow up with a neurologist and inadequate information to substantiate a definitive diagnosis of cluster headaches. The Medical Director testified he thought it prudent to have a neurological consultation and possibly an MRI before prior authorization for in home oxygen therapy could be approved. He said the symptoms reported and lack of success of medications made a neurological consultation appropriate for the Appellant. He stated the information provided alluded to a discussion with a neurologist about the treatment sought, however, this is different from a full consultation where a neurologist examines, treats and takes responsibility for the patient's treatment. It was further stated the plan was willing to follow the course of treatment recommended by a participating neurologist following a consultation with one.

The Appellant asserted she had been seen by a neurologist in the past and even in the recent past, through her primary care doctor's office. She said she had an MRI, which showed nothing in [redacted]. She further stated she was told the drug "they" want to prescribe her was most likely not covered and she feels she is being turned away no matter which treatment she seeks. She is in pain daily and can hardly manage as it is. The correspondence sent in by the PCP in [redacted] does indicate the records are not clear regarding whether the drug Imitrex was sought and denied or not. Furthermore, it merely indicates a conversation was held with a neurologist, not a full consultation.

This ALJ has concern the Appellant believes she cannot access the medical treatment she wants; however, if she has been treating with a neurologist, she should have the medical records to establish her assertions. If she does not have them, she can provide them by simply accepting a referral to a neurologist and going for the consultation. That neurologist may very well recommend the oxygen therapy she seeks at hearing. It is also possible that Imitrex would be sought by the neurologist. Unfortunately, the documentation sent to the plan by the Appellant's PCP is inadequate to establish medical necessity for the treatment sought at this point. However, the Appellant is free to re-request any treatment at any time in the future and encouraged to discuss the lack of clinical documentation with her PCP in

order to remedy that concern. While it is quite possible that a neurologist who participates with [redacted] may not recommend oxygen therapy, it cannot be known at this time what the outcome of the neurological consultation would be.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, I find the MHP properly denied the request for prior authorization for in home oxygen therapy for the treatment of the Appellant's headaches.

IT IS THEREFORE ORDERED that:

The Department's decision is UPHELD.

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

cc: [redacted]

Date Mailed: 2/12/2010

***** 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 60 days of the mailing date of the Decision and Order or, if a timely request for rehearing was made, within 60 days of the mailing date of the rehearing decision.