

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

██████████

Appellant

_____ /

Docket No. 2010-15569 PA

██████████

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 ██████████. ██████████ appeared as the Appellant's representative. ██████████ appeared and testified. ██████████, Appeals Review Officer, represented the Department. ██████████, MDCH Analyst, appeared as a witness for the Department.

ISSUE

Did the Department properly deny the Appellant's prior authorization request for Ensure?

FINDINGS OF FACT

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

1. The Appellant is a ██████████ Medicaid beneficiary.
2. On ██████████, the Department received the Prior Approval-Request/Authorization form and medical documentation from Vitalcare requesting Ensure for the Appellant. (Department Exhibit 1 pages 9-25)
3. The prior approval request form listed diagnoses of: retention of urine, diabetes, dysphagia, and nausea/vomiting and diarrhea. (Exhibit 1, page 9)

4. On ██████████, the Department denied the prior authorization request because published standards of coverage were not met. (Department Exhibit 1, pages 5-6)
5. On ██████████, the Department denied the prior authorization request again, stating that the published standards of coverage were not met. (Department Exhibit 1, pages 7-8)
6. On ██████████, the State Office of Administrative Hearings and Rules received the Appellant's hearing request. (Department Exhibit 1, page 3)

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.

The Standards of Coverage for orally administered enteral nutrition for a beneficiary over age 21 can be found in the Medical Supplier section of the Medicaid Provider Manual:

2.13.A. ENTERAL NUTRITION (ADMINISTERED ORALLY)

Standards of Coverage

For beneficiaries age 21 and over:

- The beneficiary must have a medical condition that requires the unique composition of the formulae nutrients that the beneficiary is unable to obtain from food.
- The nutritional composition of the formulae represents an integral part of treatment of the specified diagnosis/medical condition.
- The beneficiary has experienced significant weight loss.

Documentation

Documentation must be less than 30 days old and include:

- Specific diagnosis/medical condition related to the beneficiary's inability to take or eat food.
- Duration of need.
- Amount of calories needed per day.

- Current height and weight, as well as change over time. (For beneficiaries under 21, weight-to-height ratio.)
- Specific prescription identifying levels of individual nutrient(s) that is required in increased or restricted amounts.
- List of economic alternatives that have been tried.
- Current laboratory values for albumin or total protein (for beneficiaries age 21 and over only).

PA Requirements

PA is required for all enteral formulae for oral administration.

MDCH Medicaid Provider Manual,
Medical Supplier Section 2.13A,
January 1, 2009, page 30.
(Exhibit 1, page 28)

In the present case, the Department determined that that the submitted medical documentation did not meet the standards of coverage. The Department Analyst testified that the medical documentation did not document significant weight loss. The Analysts further stated that Ensure is not a special formula with a unique composition as required under the standards of coverage. The Analyst explained that there are a number of alternatives that would be appropriate for the Appellant's difficulty swallowing, including using a blender to puree foods and nonmedical items that can be found in the grocery store such as carnation instant breakfast packets which are mixed with milk. The Analyst also stated that the medical records note a loss of appetite, and Medicaid policy specifies that enteral formula is a noncovered item for this reason. (MDCH Medicaid Provider Manual, Medical Supplier Section 1.10, January 1, 2009, page 14.Exhibit 1, page 29)

The Appellant's representative disagrees with the Department's denial and testified she is not sure if the Appellant has funding for carnation packets or access to a blender. The Appellant's representative explained that the Appellant's condition changes and she may have some weight loss during the periods when can not swallow. The Appellant testified that she saw a dietician who put her on both endure and carnation. The Appellant also stated that she does not have a blender, and that when she tried pureed foods in the hospital, she was not able to get them down. However, the Appellant testified that currently she is doing better and does not have a medical need for Ensure at this point.

Based on the information submitted to the Department, the Appellant did not meet the standards of coverage for enteral nutrition. The medical documentation submitted with the prior authorization request does not include the amount of calories needed per day, specific prescription identifying the levels of individual nutrients that are required in increased or restricted amounts, or current laboratory values for albumin or total protein. Additionally, the medical documentation conflicts regarding whether or not this is the only form of nutritional intake for the Appellant (Exhibit 1, pages 10-11), shows a

relatively stable weight between 206 to 212 pounds (Exhibit 1, pages 13-23), and does not document what alternatives have been tried. The Appellant's testimony acknowledged that she does not have a current medical need for Ensure. However the testimony also indicates that her condition may change in the future. If this occurs, a new Prior Authorization request can be submitted to the Department for enteral nutrition with documentation to show that the standards of coverage are met.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly denied the Appellant's request for Ensure based upon the available information.

IT IS THEREFORE ORDERED that:

The Department's decision is **AFFIRMED**.

Colleen Lack
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:



Date Mailed: 4/5/2010

***** 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 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.