

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

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IN THE MATTER OF:

**Docket No. 2010-22382 PA
Case No. [REDACTED]**

[REDACTED]

Appellant

_____ /

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] appeared without representation. Her witness was her sister, [REDACTED]. [REDACTED] appeals review officer, represented the Department. Her witness was [REDACTED].

ISSUE

Did the Department properly deny Appellant's request for prior authorization (PA) of out-of-state genetic testing, specifically a 244K Chromosomal Micro Array (CMA)?

FINDINGS OF FACT

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

- 1) At the time of hearing the Appellant is a [REDACTED] year-old male Medicaid beneficiary.
- 2) The Appellant is afflicted with an, as yet, unidentified genetic disorder. (Department's Exhibit A, p. 10)
- 3) The Appellant has a preliminary diagnosis of developmental delay and hypotonia. (Department's Exhibit A, p. 11.)

- 4) The Appellant has a medical history of cystic fibrosis, failure to thrive and UTI. (Department's Exhibit A, pp. 11, 12.)
- 5) On [REDACTED], the Department received a PA request from [REDACTED], on behalf of the Appellant, seeking out of state, 244K CMA genetic testing. (Department's Exhibit A, pp. 2, 10.)
- 6) On [REDACTED], the PA was reviewed and denied because the requested testing is available in-state. (Department's Exhibit A, pp. 2, 9)
- 7) On [REDACTED], the Appellant and his physician were advised of the denial and their further appeal rights. (Department's Exhibit A, pp. 7-9.)
- 8) On [REDACTED] the instant request for hearing was received by SOAHR. (Appellant's Exhibit #1)

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.

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.

Medicaid Provider Manual (MPM), Practitioner, §1.10,
April 1, 2010 page 4.

The Medicaid Provider Manual further requires the establishment of medical necessity for certain testing:

The policy in this chapter pertains to the Children's Special Health Care Services (CSHCS) program only. This chapter applies to all providers.

Children's Special Health Care Services (CSHCS) is a program within the Michigan Department of Community Health (MDCH) created to find, diagnose, and treat children in Michigan who have chronic illnesses or disabling conditions. CSHCS is mandated by the Michigan Public Health Code, Public Act 368 of 1978, in cooperation with the federal government under Title V of the Social Security Act and the annual MDCH appropriations Act. CSHCS promotes the development of service structures that offer specialty health care for the CSHCS qualifying condition that is family centered, community based, coordinated, and culturally competent.

MDCH covers medically necessary services related to the CSHCS qualifying condition for individuals who are enrolled in the CSHCS Program. Medical eligibility must be established by MDCH before the individual is eligible to apply for CSHCS coverage. Based on medical information submitted by providers, a medically eligible individual is provided an application for determination of nonmedical program criteria. An individual may be eligible for CSHCS and eligible for other medical programs such as Medicaid, Adult Benefits Waiver (ABW), Medicare, or MICHild. To be determined dually eligible, the individual must meet the eligibility criteria for CSHCS and for the other applicable program(s). (Emphasis supplied)

MPM, CSHCS, §1, General Information,
April 1, 2010, page 1

The Appellant's representative said that her son needs the testing so that he might obtain a diagnosis and treatment to enable him to walk and talk. At present, the Appellant is able to roll from front to back and back to front. He is non-verbal.

The Department's witness, [REDACTED], testified that the requested testing was both available in state [at the [REDACTED]] and further that a more specific [44K CMA] test was available versus the version requested by [REDACTED] [244K CMA]. The witness said he would be happy to talk with [REDACTED] and the Appellant's mother regarding the testing.

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On review the Appellant failed to preponderate medical necessity for the 244K CMA - whether that testing was performed in state or out of state. Conversely, the Department established, with the credible testimony of [REDACTED], that a more specific version of the requested testing [a 44K CMA] was readily available.

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 PA of genetic testing – specifically the 244K CMA.

IT IS THEREFORE ORDERED that:

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

Dale Malewska
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc: [REDACTED]

Date Mailed: 04/27/2010

***** 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.