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. 2010-29919 QHP
Case No. [redacted]

[redacted],

Appellant
_____/

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, [redacted], appeared on her own behalf. [redacted] appeared as a witness for the Appellant. [redacted], Paralegal, represented Great Lakes Health Plan, Inc., the Medicaid Health Plan (MHP). Dr. [redacted], Medical Director; [redacted], Pharmacy Representative; and [redacted]r, Registered Nurse/Case Manager/Discharge Planner, appeared as witnesses for the MHP.

ISSUE

Did the MHP properly deny the Appellant's request for Con-Tour chem strips?

FINDINGS OF FACT

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

1. The Appellant is a [redacted] female Medicaid beneficiary who is currently enrolled in Great Lakes Health Plan, Inc., a MHP. (Exhibit 1, page 2)

2. The Appellant is a brittle, Type 1 diabetic, who is required to take multiple daily glucose readings. (Testimony of Corby; Exhibit 1, page 2)

3. On [redacted], the MHP received a request for Bayer Con-Tour chem strips. (Exhibit 1, page 4)

4. On [redacted], the MHP sent the Appellant a denial notice, stating that her request was denied because the requested test strips, as well as the glucometer that uses the requested test strips, are not on the MHP's Drug Formulary. (Exhibit 1, pages 4-5)

5. The Appellant requested a formal, administrative hearing contesting the denial on [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 MHPs.

The Respondent is one of those MHPs.

> 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. The Contractor 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 2.024.
>
> *Section 1.022(E)(1), Covered Services.*
> *MDCH contract (Contract) with the Medicaid Health Plans,*
> *October 1, 2009.*

> (1) The major components of the Contractor's utilization management (UM) program must encompass, at a minimum, the following:
>
> (a) Written policies with review decision criteria and procedures that conform to managed health care industry standards and processes.

(b) A formal utilization review committee directed by the Contractor's medical director to oversee the utilization review process.
(c) Sufficient resources to regularly review the effectiveness of the utilization review process and to make changes to the process as needed.
(d) An annual review and reporting of utilization review activities and outcomes/interventions from the review.
(e) The UM activities of the Contractor must be integrated with the Contractor's QAPI program.

(2) Prior Approval Policy and Procedure
The Contractor must establish and use a written prior approval policy and procedure for UM 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 UM decisions be made by a health care professional who has appropriate clinical expertise regarding the service under review.

Section 1.022(AA), Utilization Management, Contract, October 1, 2009.

As stated in the Department-MHP contract language above, a MHP "must operate consistent with all applicable Medicaid Provider Manuals and publications for coverages and limitations." The pertinent section of the Michigan Medicaid Provider Manual (MPM) states:

2.3 BLOOD GLUCOSE MONITORING EQUIPMENT AND SUPPLIES

Definition
Blood glucose monitoring supplies and equipment are defined as those items necessary to monitor blood glucose levels. The equipment and supplies include, but are not limited to, blood glucose monitors, testing strips, lancets, and calibrator solution/chips.

Standards of Coverage
A home blood glucose monitor and related supplies are covered when a beneficiary has been diagnosed with diabetes and it is medically necessary to monitor fluctuations of blood glucose levels on a daily basis. Diabetes includes:

Gestational diabetes
Insulin-dependent diabetes
Non-insulin dependent diabetes.

Documentation
Documentation must be less than 90 days old and include all of the following:

Diagnosis/condition related to the need for the blood glucose monitoring.
Items to be dispensed.
Quantity of items to be dispensed for 30-90 days usage.
Frequency of testing.

* * *

PA Requirements
PA is required for:

Home blood glucose monitors with special features such as voice synthesis.
Medical need not within the Standards of Coverage and/or a diagnosis that has not been removed from PA.
Replacement within three years.

Payment Rules

All items (including the monitor) are considered **purchase only** items.
To report date of service (DOS) for blood glucose test or reagent strips, lancets, and normal, low and high calibrator solution, use a span date in the "From" and "To" fields,
not to exceed 90 days.

Department of Community Health,
Medicaid Provider Manual, Medical Supplier Section
Version Date: April 1, 2010, Pages 21-22

The Appellant is contesting the denial of a specific brand of chemical test strips—Bayer Con-Tour chem strips. The Appellant testified that she has used these particular test strips and the glucometer that they work with for years. However, the MHP testified that the requested test strips and its corresponding glucometer are not included in the MHP's Drug Formulary. The MHP further testified that there are formulary alternatives to the glucometer and test strips—True Track and True Result—that have been approved by the Federal Drug Administration, and that other diabetics of similar type and age have used them successfully.

The Department-MHP contract does provide for prior approval for medical supplies not included in the MHP's Drug Formulary when medically necessary, and when formulary alternatives have demonstrated ineffectiveness. Here, while it is clear that the Appellant is unhappy with the MHP's glucometers and test strips, she has not demonstrated that they

are ineffective. The Appellant and her witness testified that the MHP's glucometer has given her false readings when compared to her Contour glucometer. However, she has not documented these alleged inaccuracies, so this ALJ has no way of knowing their extent or frequency. Additionally, the Appellant has not had comparative blood testing to confirm the alleged inaccuracy of the formulary alternative glucometers, and she has refused training from a nurse educator to rule out the possibly of her own misuse causing the alleged inaccuracies. Accordingly, this ALJ must affirm 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 the Appellant's request for Bayer Con-Tour test strips.

IT IS THEREFORE ORDERED that:

The MHP's decision is AFFIRMED.

Kristin M. Heyse
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: 06/28/2010

***** 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.