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. 2010-33890 QHP
Case No. [redacted]

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 on her own behalf.

[redacted] was represented by [redacted], Customer Services Director. [redacted] RN Director of [redacted], and Debra Bell, Grievance and Appeals Coordinator, appeared as a witness for [redacted]. [redacted] is a Department of Community Health contracted Medicaid Health Plan.

ISSUES

1. Did the Medicaid Health Plan properly deny the Appellant's request for Provigil?

2. Has the Medicaid Health Plan denied the Appellant access to care and services?

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 who is currently enrolled in [redacted], a Medicaid Health Plan (MHP).

2. The Appellant was enrolled in the MHP effective [redacted] (Exhibit 2, page 2)

3. On [redacted] the MHP received a prior authorization request for Provigil for the Appellant, submitted with a genetic study indicating a diagnosis of narcolepsy with cataplexy. (Exhibit 2, page 10)

4. On [redacted], the MHP requested a sleep study to confirm the diagnoses of narcolepsy from the Appellant's doctor's office. (Exhibit 2, page 10)

5. On [redacted], the MHP denied the medication as they did not receive any additional information from the Appellant's doctor's office. (Exhibit 2, page 10)

6. On [redacted], the MHP sent the Appellant notice that the prior authorization request for Provigil was denied. (Exhibit 2, pages 8-9)

7. Pursuant to MSA Bulletin 10-08, specified therapeutic drug classes were no longer covered through MHPs and could only be billed at point of sale directly to the Michigan Department of Community Health contracted pharmacy benefit manager, [redacted] effective for service dates on or after [redacted]. (Exhibit 2, pages 12-14)

8. Provigil is included in one of these specified therapeutic drug classes, H2A central nervous system stimulants. (MHP Testimony)

9. The Appellant alleges that the MHP has denied her access to care and services. (Appellant Testimony)

10. The MHP has approved referrals for the Appellant to four providers since [redacted]. (Exhibit 2, page 3)

11. The MHP has attempted to work with the Appellant and her doctor's office, explaining to both that the Appellant's doctor must submit a request to the MHP for the additional services the Appellant is requesting. (MHP Testimony and Exhibit 2 pages 4-7)

12. The Appellant filed a hearing request on [redacted] contesting the sleep study requirement and regarding access to care and services through the MHP. (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.

On [redacted] the Department received approval from the [redacted] 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.
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> *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.
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> *Article II-P, Utilization Management, Contract, September 30, 2004.*

The MHP documentation indicates that the MHP utilized the Medicaid criteria as found in the Michigan Pharmaceutical Product List (MPPL), which requires a sleep study to confirm the diagnosis of narcolepsy. (Exhibit 2, page 10) This information was requested from the Appellant's doctor the same date the request for the medication was received, [redacted]. (Exhibit 2, page 10) The MHP denied the medication on [redacted] as the requested information was not provided and the denial notice was issued [redacted]. (Exhibit 2, pages 8-10)

The Appellant disagrees with the denial and testified she does not have narcolepsy. The Appellant stated that she has mild sleep apnea and the requested medication is used to keep her alert so she can care for her daughter. The Appellant explained that she can not use a C-PAP machine at night because her daughter is up during the night. The Appellant believes it is a waste of money to have a sleep study she does not need.

Unfortunately, the information provided to the MHP with the prior authorization request indicated a diagnosis of narcolepsy, which needed to be substantiated by a sleep study. The Appellant's doctor did not provide any additional information to the MHP for processing the request for Provigil, either the requested sleep study or information to correct or clarify the Appellant's diagnosis. Based on the information they received, the MHP properly denied the Appellant's request for Provigil.

Further, the MHP explained that pursuant to MSA Bulletin 10-08, specified therapeutic drug classes were no longer covered through MHPs and could only be billed at point of sale directly to the Michigan Department of Community Health contracted pharmacy benefit manager [redacted] effective for service dates on or after [redacted] (Exhibit 2, pages 12-14) Provigil included in one of these specified therapeutic drug classes, H2A central nervous system stimulants. (MHP Testimony) Accordingly, the MHP correctly testified that they can no longer consider prior authorization requests for this medication. The Appellant will have to pursue coverage of this medication through [redacted].

The Appellant also clearly testified that the denial of this medication was not the only problem she has with the MHP. However, the Appellant's allegations that the MHP has denied access to care or services are not supported by the evidence. For example, the Appellant stated that the MHP has refused to provide her with case management or medical advocacy. However the RN from the MHP testified and provided documentation of the case management services she has provided to the Appellant, including multiple phone calls with the Appellant and her doctor's office. (Exhibit 2, pages 4-7)

The Appellant also indicated that she has had trouble obtaining referrals and getting authorization to the doctors she wants to see, which has been stressful. The MHP has submitted evidence that they have approved four referrals for the Appellant since [redacted]. (Exhibit 2, page 3) If the Appellant requests information on providers within the MHP's network, these may not be the doctors the Appellant prefers to see or in locations the Appellant wishes to go for treatment. However, the MHP explained that they can consider requests for referrals to out of network providers, but a request must be made by the primary care doctor. The MHP testified that they have explained this to the Appellant as well as her primary care doctor, who has not yet sent in the referral request.

Other issues raised by the Appellant are outside of the scope of services the MHP can provide, such as who will care for her disabled daughter if the Appellant out of the home for overnight testing, treatments or is hospitalized for a needed shoulder surgery.

While this ALJ sympathizes with the Appellant's circumstances, the Appellant has not shown that the MHP improperly denied her prior authorization request for Provigil or has denied her access to Medicaid covered care or services. Based on the information provided with the prior authorization request for Provigil, the MHP properly denied coverage for this medication. The MHP also provided evidence that case management services were provided to the Appellant. Further, the MHP can not be said to have denied access when the Appellant's doctor has not sent in a request for the treatment or service, including referrals to the out of network providers.

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 Provigil and that the MHP has not denied the Appellant access to care or services

IT IS THEREFORE ORDERED that:

The Medicaid Health Plan's actions are AFFIRMED.

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

cc: [redacted]

Date Mailed: 8/3/2010

***** 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.