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:

[redacted]

Appellant
_____/

Docket No. 2010-41991 PA
[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 behalf of the Appellant. She had no witnesses. [redacted], appeals review officer, represented the Department. Her witness was Medicaid Analyst, [redacted]

ISSUE

Did the Department properly deny Appellant's request for prior authorization (PA) of Prosource protein powder for the Appellant?

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 an [redacted] who is a Medicaid beneficiary.

2. The Appellant is severely DD. He has cerebral palsy, quadriplegia, is wheelchair bound and is a "vent dependent" individual. (*See* Exhibit A – throughout.)

3. The Appellant is living in a group home.

4. The Appellant has consumed some version of a protein powder for much of his life.

5. The Appellant's doctor requested Prosource on a PA [redacted] and then requested Nutren 1.0 on a PA dated [redacted] (Department's Exhibit A, pp. 9, 10)

6. There was no explanation or documentation of medical necessity for the proposed switch from Nutren powder to Prosource protein powder. (See Testimony of [redacted])

7. The Department sought additional information prior to denial. (See Department's Exhibit A, p. 8)

8. No information was provided from [redacted]. (See Testimony)

9. The Appellant's guardians did not sign a waiver of the right to PA prior authorization. However, the product was accepted by a nurse at the group home. (See Testimony and Department's Exhibit A, p. 2)

10. The Appellant was notified of the denial for Prosource on [redacted], for lack of medical necessity. (Department's Exhibit A, p. 5)

11. The instant appeal was received by SOAHR on [redacted]. (Appellant's Exhibit #1)

12. A request for prior authorization was submitted to the Department, using the [redacted], prescription, on or about [redacted].

13. Following review of the documentation submitted the Department denied the request for prior authorization on [redacted]

14. On [redacted], the Appellant filed a Request for Hearing with the State Office of Administrative Hearings and Rules.

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 Medicaid Provider Manual (MPM) addresses the need for prior authorization in the chapter on General Information for Providers at §8, Prior Authorization:

[General Information]

There may be occasions when a beneficiary requires services beyond those ordinarily covered by Medicaid or needs a service that requires prior

authorization (PA). In order for Medicaid to reimburse the provider in this situation, MDCH requires that the provider obtain authorization for these services before the service is rendered. Providers should refer to their provider-specific chapter for the PA requirements.

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The Medical Supplier Chapter addresses the PA requirements for products. It states in pertinent part:

Prior authorization (PA) is required for certain items before the item is provided to the beneficiary or, in the case of custom-made DME or prosthetic/orthotic appliance, before the item is ordered. To determine if a specific service requires PA, refer to the Coverage Conditions and Requirements Section of this chapter and/or the MDCH Medical Supplier Database on the MDCH website.

PA will be required in the following situations:

- Services that exceed quantity/frequency limits or established fee screen.
- Medical need for an item beyond MDCH's Standards of Coverage.
- Use of a Not Otherwise Classified (NOC) code.
- More costly service for which a less costly alternative may exist.
- Procedures indicating PA is required on the MDCH Medical Supplier Database.

MPM, §1.7[1] Prior Authorization,
January 1, 2010 at page 7

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.

[1] The medical supplier requirements under the MPM changed significantly post Department denial. The information reflected here represents the manual requirements in place at the time of decision and notice to deny.

- 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.

MPM, *Supra* at page 3

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

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MPM, *Supra* at page 15

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Then Department witness, [redacted], testified that on prior authorization request there was inadequate information regarding medical necessity for the Department to make an informed decision – particularly a retroactive decision. Analyst [redacted] testified that not all protein powders are the same and that the Department attempted to get additional information to support the request for PA – but nothing was provided. [*See* Letter to [redacted] at Department's Exhibit A, p. 8]

One unanswered question posed to the supplier concerned the general applicability of this product for those age 10 and under – as opposed to age 18. The department witness indicted that this factor alone would not be dispositive – but none of the variables were explained to the Department reviewers.

The Appellant's representative said that the Appellant has always been on Prosource and that the nurse at the group home apparently received the product without looking at the invoice. The guardian said she does not order the product and was not at the group home when the package arrived.

She said it did not appear that anything was done by [redacted] when the Department requested additional information – so when the shipment arrived the nurse unwittingly signed and waived the right to PA.

This ALJ is sympathetic to the Appellant's position with her medical supplier, [redacted] The testimony does suggest that the supplier was not timely in responding to the Department. However, there was an authorized acceptance of the product on delivery. The ALJ suggested that the Appellant's representative revisit this issue with [redacted] - as the authority of the ALJ does not include the necessary equitable jurisdiction to provide the relief sought by the Appellant.

The ALJ is constrained by policy and the Department's position was correct when made.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly denied PA for Prosource protein powder for lack of medical necessity.

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: 9/30/2010

***** 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.