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. 2010-44986 QHP
Case No. 80118091

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]. The Appellant appeared without representation. She had no witnesses. [redacted], represented the Medicaid Health Plan (MHP). Her witnesses were; [redacted], and [redacted].

ISSUE

Did the Medicaid Health Plan properly deny Appellant's request for compounded hormone replacement therapy?

FINDINGS OF FACT

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

1. The Appellant is [redacted] Medicaid beneficiary who is currently enrolled in the [redacted], a MHP.

2. The Appellant has been enrolled in the MHP since [redacted]. (Respondent's Exhibit A, p. 1)

3. The Appellant has been diagnosed with menopause. (Appellant's Exhibit #1, p. 1)

4. On [redacted], the MHP received a request from the Appellant's physican for "ESTROL POW MICRONIZ, PROGESTERONE INJ 50 MG/ML, TESTOST PROP POW" [compounded hormone replacement therapy]. (Respondent's Exhibit A, pp. 3-5)

5. On [redacted], following GLHP review, the request for compounded hormone therapy was denied as coverage criteria had not been met. The Appellant and her physician were notified of the denial in writing. (Respondent's Exhibit A, pp. 3 – 5)

6. The Appellant's further appeal rights were included in the denial notice. (Respondent's Exhibit A, pp. 3 – 5)

7. The MHP determined that the compounded hormone therapy was "investigational" treatment/therapy and not authorized under the Contract and Medicaid policy. (Respondent's Exhibit A, p. 6 and See Testimony)

8. The MHP recommended formulary approved medications. (See Respondent's Exhibit A – throughout)

9. The instant request for hearing was received by SOAHR on [redacted]. (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.

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 Medicaid Health Plans.

> The covered services that the Contractor has available for enrollees must include, at a minimum, the covered services listed below. 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.

Although the Contractor must provide the full range of covered services listed below they may choose to provide services over and above those specified. The covered services provided to enrollees under this Contract include, but are not limited to, the following:

- Ambulance and other emergency medical transportation
- Blood lead testing in accordance with Medicaid Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) policy
- Certified nurse midwife services
- Certified pediatric and family nurse practitioner services
- Chiropractic services
- Diagnostic lab, x-ray and other imaging services
- Durable medical equipment (DME) and supplies
- Emergency services
- End Stage Renal Disease services
- Family planning services (e.g., examination, sterilization procedures, limited infertility screening, and diagnosis)
- Health education
- Hearing and speech services
- Hearing aids
- Home Health services
- Hospice services (if requested by the enrollee)
- Immunizations
- Inpatient and outpatient hospital services
- Intermittent or short-term restorative or rehabilitative services (in a nursing facility), up to 45 days
- Restorative or rehabilitative services (in a place of service other than a nursing facility)
- Medically necessary weight reduction services
- Mental health care – maximum of 20 outpatient visits per calendar year
- Out-of-state services authorized by the Contractor
- Outreach for included services, especially pregnancy-related and Well child care
- Parenting and birthing classes
- Pharmacy services
- Podiatry services
- Practitioners' services (such as those provided by physicians, optometrists and dentists enrolled as a Medicaid Provider Type 10)

- Prosthetics and orthotics
- Tobacco cessation treatment including pharmaceutical and behavioral support
- Therapies (speech, language, physical, occupational) excluding services provided to persons with development disabilities which are billed through Community Mental Health Services Program (CMHSP) providers or Intermediate School Districts.
- Transplant services
- Transportation for medically necessary covered services
- Treatment for sexually transmitted disease (STD)
- Vision services
- Well child/EPSDT for persons under age 21

Article 1.020 Scope of [Services], at §1.022 E (1) contract, 2010, p. 22.

...

Services Prohibited or Excluded under Medicaid; the Contractor is prohibited from using State funds to provide these services

- Elective abortions and related services
- Experimental/investigational drugs, procedures or equipment
- Elective cosmetic surgery
- Services for treatment of infertility. *Supra* p. 24

The MHP contract provisions allow prior approval procedures for utilization management purposes. The MHP's Pharmacy Director testified that the requested compounds were not FDA approved – and while there was anecdotal evidence of efficacy and better tolerance – the problem of long term safety for these compounded products could not be established. The compounded hormones were determined to be investigational and thus prohibited under the contract, above. She added that formulary alternatives were available and offered to the Appellant.

The Appellant said she felt better taking the compounded therapy and expressed the hope that some day the MHP would change its ruling.

On review, the Appellant seeks compounded hormone therapy/services presently excluded under the MHP contract and which are not otherwise covered by this health plan. She has not preponderated her burden of proof that the MHP inappropriately denied a medically necessary request for service.

The MHP's denial of the Appellant's prior-authorization request was proper.

DECISION AND ORDER

The ALJ, based on the above findings of fact and conclusions of law, decides that the MHP properly denied the Appellant's request for compounded hormone therapy.

IT IS THEREFORE ORDERED that:

The MHP's decision is AFFIRMED.

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

cc: [redacted]

Date Mailed: 10/26/2010

***** 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.