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:

Docket No. 2010-54989 QHP
[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.,* following the Appellant's request for a hearing.

After due notice, a hearing was held on [redacted]. The Appellant, [redacted] was present for the hearing. He was represented by his mother, [redacted]. The Respondent, [redacted], was represented by [redacted] Appeals Coordinator. [redacted], Medical Director, appeared as a witness for the Respondent.

ISSUE

Did the Respondent properly deny the Appellant's request for UVB phototherapy?

FINDINGS OF FACT

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

1. The Respondent, [redacted] of Michigan, is a Michigan Department of Community Health (MDCH) contracted Medicaid Health Plan (MHP).

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

3. The Appellant has been diagnosed with psoriasis. (Exhibit 1, page 3)

4. On [redacted], the MHP received a request for coverage of UVB phototherapy for the Appellant. The request included a billing code of 96900. (Exhibit 1, page 2)

5. On [redacted], the MHP requested additional information from the prescribing physician, and a report dated [redacted] was provided. (Exhibit 1, pages 5-7)

6. The MHP further inquired with the prescribing physician's office as to whether there was an alternative billing code available. The office advised that the code submitted was the only code the office could use for the requested therapy. (Exhibit 1, page 12)

7. On [redacted], the MHP sent the Appellant notice that the request for UVB phototherapy was denied because, pursuant to Department policy, the requested billing code for the therapy, 96900, is not a covered benefit. (Exhibit 1, pages 9-10)

8. On [redacted], the Department received the Appellant's Request for Hearing.

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 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. 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 Medical Supplier Section of the Michigan Medicaid Provider Manual provides a non-exhaustive list of non-covered items, including UV lighting for Seasonal Affective Disorder. It further refers the reader to the database available on the MDCH website for specific procedure codes that are not covered by the Department. *MDCH Medicaid Provider Manual, Medical Supplier, Version Date: July 1, 2010, page 12.* The procedure code requested in this case, 96900, is one of those non-covered codes. (Exhibit 1, pages 14-15). However, there is another code for ultraviolet therapy, 97028, available on the MDCH Outpatient Therapy Services Database. See *http://www.michigan.gov/documents/mdch/Therapies_Outpatient_092010_332585_7.pdf.*

The MHP explained that it denied the Appellant's request for UVB phototherapy because it was bound to follow Medicaid policy, which specifically excludes coverage for the particular code requested in this case. It further explained that phototherapy is covered by MDCH under a different code. However, the prescribing physician was unwilling to change the procedure code in this case.

The Appellant testified that he has open sores on his head, stomach, and back, which are very painful and very embarrassing. He stated that he has trouble sleeping at night and he is starting to lose his hair because of the sores. He further stated that he has tried four different ointments and oral medications, but none of them have been successful in treating his psoriasis.

While this Administrative Law Judge sympathizes with the Appellant's circumstances, the MHP's denial must be upheld. It appears that UVB phototherapy itself is a covered service, but the requested billing code, 96900, is not covered by MDCH. And this ALJ has no authority to "make decisions on constitutional grounds, overrule statutes, overrule promulgated regulation[s] or overrule or make exceptions to Department policy." (Delegation of Hearing Authority, effective [redacted] However, the Appellant may resubmit his request at anytime under the approved billing code.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that that the Medicaid Health Plan properly denied the Appellant's request for UVB phototherapy.

IT IS THEREFORE ORDERED that:

The Medicaid Health Plan's decision is AFFIRMED.

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

cc: [redacted]

Date Mailed: 12/17/2010

***** 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.