

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:

██████████,

Appellant

Docket No. 2010-55657 PHR
██████████

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 ██████████. The Appellant ██████████, appeared on his own behalf. ██████████, Clinical Pharmacist for ██████████ Administration, represented the Michigan Department of Community Health (MDCH).

ISSUE

Did the Department properly deny the Appellant's request for prior authorization of Soriatane?

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 Appellant is a Medicaid recipient, who has been diagnosed with pachyonychia congenita. (Exhibit 1, page 3)
2. In ██████████, the Appellant's physician sought prior approval for Soriatane. (Exhibit 1, page 3)
3. The Michigan Medicaid Guidelines state that Soriatane may be approved for the following diagnoses: severe psoriasis, including erythroderma and pustular types; Darrier's disease; palmoplantar pustolosis; children with lamellar, non-bullous and bullous ichthyosiform; and Sjogren-Larsson syndrome. (Exhibit 1, page 7)

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4. The request for Soriatane was approved for a three-month period. However, the approval noted that at the next request, the Appellant's physician should provide a treatment update with a patient-specific description. It further noted that a broad statement, such as "improved" would not be sufficient. (Testimony of [REDACTED] Exhibit 1, page 3)
5. On [REDACTED], the Appellant's physician again sought prior approval for Soriatane. At that time, the Appellant's physician's office advised that the Appellant was much better on the medication than off but could not provide any specific information about how the Appellant's condition has improved. The Appellant's physician advised that the Appellant's condition is not curable and barely treatable and that the Appellant has less fissures and cracks when on the medication. (Exhibit 1, page 3)
6. Following review by a Department physician, the request for prior approval of Soriatane was denied because the Appellant's physician did not submit the information requested regarding the Appellant's condition. Specifically, the Appellant's physician must provide a clinical description of the Appellant's noted improvement.
7. The Appellant requested a formal, administrative hearing on [REDACTED]
[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.

Social Security Act § 1927(d), [42 USC 1396r-8(d)]

LIMITATIONS ON COVERAGE OF DRUGS –

(1) PERMISSIBLE RESTRICTIONS –

- (A) A state may subject to prior authorization any covered outpatient drug. Any such prior authorization program shall comply with the requirements of paragraph (5). A state may exclude or otherwise restrict coverage of a covered outpatient drug if –
 - (i) the prescribed use is not for a medically accepted indication (as defined in subsection (k)(6));
 - (ii) the drug is contained in the list referred to in paragraph (2);

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- (iii) the drug is subject to such restriction pursuant to an agreement between a manufacturer and a State authorized by the Secretary under subsection (a)(1) or in effect pursuant to subsection (a)(4); or
- (iv) the State has excluded coverage of the drug from its formulary in accordance with paragraph 4.

(2) LIST OF DRUGS SUBJECT TO RESTRICTION –The following drugs or classes of drugs, or their medical uses, may be excluded from coverage or otherwise restricted:

- (A) Agents when used for anorexia, weight loss, or weight gain.
- (B) Agents when used to promote fertility.
- (C) Agents when used for cosmetic purposes or hair growth.
- (D) Agents when used for the symptomatic relief of cough and colds.
- (E) Agents when used to promote smoking cessation.
- (F) Prescription vitamins and mineral products, except prenatal vitamins and fluoride preparations.
- (G) Nonprescription drugs.
- (H) Covered outpatient drugs, which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee.
- (I) Barbiturates.
- (J) Benzodiazepines.
- (K) Agents when used for the treatment of sexual or erectile dysfunction, unless such agents are used to treat a condition, other than sexual or erectile dysfunction, for which the agents have been approved by the Food and Drug Administration.

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(4) REQUIREMENTS FOR FORMULARIES — A State may establish a formulary if the formulary meets the following requirements:

- (A) The formulary is developed by a committee consisting of physicians, pharmacists, and other appropriate individuals appointed by the Governor of the State (or, at the option of the State, the State's drug use review board established under subsection (g)(3)).
- (B) Except as provided in subparagraph (C), the formulary includes the covered outpatient drugs of any manufacturer, which has entered into and complies with an agreement under subsection (a) (other than any drug excluded from coverage or otherwise restricted under paragraph (2)).
- (C) A covered outpatient drug may be excluded with respect to the treatment of a specific disease or condition for an identified population (if any) only if, based on the drug's labeling (or, in the case of a drug the prescribed use of which is not approved under the Federal Food, Drug, and Cosmetic Act but is a medically accepted indication, based on information from appropriate compendia described in subsection (k)(6)), the excluded drug does not have a significant, clinically meaningful therapeutic advantage in terms of safety, effectiveness, or clinical outcome of such treatment for such population over other drugs included in the formulary and there is a written explanation (available to the public) of the basis for the exclusion.
- (D) The state plan permits coverage of a drug excluded from the formulary (other than any drug excluded from coverage or otherwise restricted under paragraph (2)) pursuant to a prior authorization program that is consistent with paragraph (5).
- (E) The formulary meets such other requirements as the Secretary may impose in order to achieve program savings consistent with protecting the health of program beneficiaries.

A prior authorization program established by a State under paragraph (5) is not a formulary subject to the requirements of this paragraph.

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(5) REQUIREMENTS OF PRIOR AUTHORIZATION PROGRAMS — A State plan under this title may require, as a condition of coverage or payment for a covered outpatient drug for which Federal financial participation is available in accordance with this section, with respect to drugs dispensed on or after July 1, 1991, the approval of the drug before its dispensing for any medically accepted indication (as defined in subsection (k)(6)) only if the system providing for such approval –

- (A) Provides response by telephone or other telecommunication device within 24 hours of a request for prior authorization; and
- (B) Except with respect to the drugs referred to in paragraph (2) provides for the dispensing of at least 72-hour supply of a covered outpatient prescription drug in an emergency situation (as defined by the Secretary).

42 USC 1396r-8(k)(6) MEDICALLY ACCEPTED INDICATION -

The term “medically accepted indication” means any use for a covered outpatient drug which is approved under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.] or the use of which is supported by one or more citations included or approved for inclusion in any of the compendia described in subsection (g)(1)(B)(i).

The Medicaid Provider Manual addresses prior-authorization requirements as follows:

8.2 PRIOR AUTHORIZATION REQUIREMENTS

PA is required for:

- Products as specified in the MPPL. Pharmacies should review the information in the Remarks as certain drugs may have PA only for selected age groups, gender, etc. (e.g., over 17 years).
- Payment above the Maximum Allowable Cost (MAC) rate.
- Prescriptions that exceed MDCH quantity or dosage limits.
- Medical exception for drugs not listed in the MPPL.
- Medical exception for noncovered drug categories.
- Acute dosage prescriptions beyond MDCH coverage limits for H2 Antagonists and Proton Pump Inhibitor medications.

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- Dispensing a 100-day supply of maintenance medications that are beneficiary-specific and not on the maintenance list.
- Pharmaceutical products included in selected therapeutic classes. These classes include those with products that have minimal clinical differences, the same or similar therapeutic actions, the same or similar outcomes, or have multiple effective generics available.

* * *

8.4 DOCUMENTATION REQUIREMENTS

For all requests for PA, the following documentation is required:

- Pharmacy name and phone number;
- Beneficiary diagnosis and medical reason(s) why another covered drug cannot be used;
- Drug name, strength, and form;
- Other pharmaceutical products prescribed;
- Results of therapeutic alternative medications tried; and
- MedWatch Form or other clinical information may be required.

* * *

8.6 PRIOR AUTHORIZATION DENIALS

PA denials are conveyed to the requester. PA is denied if:

- The medical necessity is not established.
- Alternative medications are not ruled out.
- Evidence-based research and compendia do not support it.
- It is contraindicated, inappropriate standard of care.
- It does not fall within MDCH clinical review criteria.
- Documentation required was not provided.

MDCH Medicaid Provider Manual; Pharmacy Section
Version Date: July 1, 2010, Pages 14-16

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The Department is authorized by federal law to develop a formulary of approved prescriptions and a prior-authorization process. *MDCH Medicaid Provider Manual, Pharmacy Section, July 1, 2010, pages 14 – 16*. The Department has authorized approval of the requested drug—Soriatane—for the following diagnoses: severe psoriasis, including erythroderma and pustular types; Darrier’s disease; palmoplantar pustolosis; children with lamellar, non-bullous and bullous ichthyosiform; and Sjogren-Larsson syndrome. (Exhibit 1, page 7). Here, the Appellant has been diagnosed with pachyonychia congenita, which is not one of the approved diagnoses. However, his original request for Soriatane was approved by the Department. But as a condition of continued approval, the Department specifically noted that the Appellant’s physician must include a treatment update with a patient-specific description with any future request. When the instant request was made, the Appellant’s physician did not provide the detailed description regarding improvement that the Department was looking for. Rather, he merely stated that the Appellant’s condition is not curable and barely treatable and that the Appellant has less fissures and cracks when on the medication. (Exhibit 1, page 3)

The Appellant’s physician failed to provide the information requested by the Department to support continued authorization of Soriatane. Specifically, he failed to provide any clinical documentation to support that the Appellant’s condition has improved based on his use of the drug. While the Appellant testified that his condition has improved, his testimony is insufficient to satisfy the Department’s request. However, the Appellant’s physician may re-submit the request at any time.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly denied Appellant’s request for prior approval of Soriatane.

IT IS THEREFORE ORDERED that:

The Department’s decision is **AFFIRMED**.

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

cc:



Date Mailed: 12/20/2010

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***** NOTICE *****

The State Office of Administrative Hearings and Rules for the Department of Community Health 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 for the Department of Community Health 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.