

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF

Docket No. 2010- 7404 ABW
Case No. 32631912

██████████
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.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████
appeared on her ██████████ ██████████
Tencon Health Plan, a County-Administered Health Plan (CHP). ██████████ and
██████████, appeared as a witness for the CHP.

ISSUE

Did the County Health Plan properly deny Appellant's prior authorization Botox injection for gastroparesis request?

FINDINGS OF FACT

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

1. Appellant is enrolled in the County Health Plan as an Adult Benefit Waiver beneficiary.
2. The CHP contracts with ██████████ to provide services covered by the Adult Benefit Waiver.
3. Appellant is a ██████ year-old female.
4. Gastroparesis is a medical condition, for which one symptom is delayed gastric emptying. (Exhibit 1, att. E).

5. In [REDACTED], Appellant had a gastric emptying test performed which revealed her gastric emptying was within normal limits. (Exhibit 1, att. G, p 16).
6. On [REDACTED], Appellant's physician, [REDACTED], requested Botox injection for gastroparesis for Appellant. (Exhibit 1, p 1). The CHP requested medical documentation of medical necessity from Dr. Hegewald. (Exhibit 1, att. G, p 16).
7. On [REDACTED], a [REDACTED] doctor reviewed the Appellant's request and denied because her physician failed to establish medical necessity for Botox injection for gastroparesis and it was being requested for off-label use. (Exhibit 1, p 1).
8. On [REDACTED], the Department of Community Health (DCH) received the Appellant's request for an Administrative Hearing. (Exhibit 2).

CONCLUSIONS OF LAW

On January 16, 2004, the federal Department of Health and Human Services, Centers for Medicare and Medicaid Services, approved the Adult Benefit Waiver to permit the state to use state funds and funds authorized under Title XXI of the Social Security Act to provide coverage to uninsured adults who were not otherwise eligible for Medicaid or Medicare. The program utilizes the Medicaid provider network and County-Administered Health Plans (CHPs) as managed care providers.

The Department's policy with regard to the Adult Benefits Waiver is found in the Medicaid Provider Manual:

SECTION 1 - GENERAL INFORMATION

This chapter applies to all providers.

The Adult Benefits Waiver (ABW), provides health care benefits for Michigan's childless adult residents (age 18 through 64) with an annual income at or below 35 percent of the Federal Poverty Level (FPL). Covered services and maximum co-payments for beneficiaries in this eligibility category are detailed in the following sections. Unless noted in Medicaid provider-specific chapters, service coverage and authorization requirements for the fee-for-service (FFS) beneficiaries enrolled in the ABW program mirror those required for Medicaid. Only those providers enrolled to provide services through the Michigan Medicaid Program may provide services for FFS ABW beneficiaries.

SECTION 1.1 - COUNTY ADMINISTERED HEALTH PLANS

ABW beneficiaries enrolled in CHPs are subject to the requirements of the respective CHP. In those counties operating nonprofit CHPs, all covered services for ABW beneficiaries must be provided through the health plan. CHPs administering the ABW program are required to provide the services as noted in the Coverage and Limitations Section of this chapter to ensure that benefits are consistent for all ABW beneficiaries across the FFS and CHP programs.

*Medicaid Provider Manual, Adult Benefits Waiver,
July 1, 2009, Page1.*

The Appellant testified at hearing that without Botox injection to her pylorus she was becoming dehydrated. The Appellant stated that when she previously had Botox she wasn't dehydrated. The Appellant admitted that Botox did not help with the emptying of solid foods from her stomach, but it did help with emptying of fluids. The Appellant testified that she experiences discomfort after eating without Botox injections to her pylorus.


The CHP representative stated that it implements the ABW program consistent with Department Medicaid policy. The CHP testified and submitted evidence that its coverage policy is consistent with the Department's Medicaid policy, and both explicitly excludes coverage of drugs for off-label use. (Exhibit 1, attachments C, D and F). The CHP established that Botox injection for gastroparesis is an off-label use of the drug. (Exhibit 1, attachments C, D and F).

The CHP also established that it requested documentation from Appellant's physician office to demonstrate medical necessity but the Appellant's physician did not submit medical documentation of medical necessity for gastroparesis Botox injection. To the contrary, the CHP introduced evidence that Appellant's physician documented that the results of Appellant's [REDACTED] gastric emptying test revealed her gastric emptying was within normal limits. (Exhibit 1, attachment G, p 16).

The CHP denial of Botox injection for gastroparesis is consistent with Medicaid policy. The CHP is bound by Department Medicaid policy. As such, the CHP is not required to provide coverage for Botox injection for gastroparesis where medical necessity is not established and where it is for off-label use. For these reasons the CHP's denial was proper.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the County Health Plan properly denied Appellant's Botox injection for gastroparesis request.


2010-7404 ABW
Decision and Order

IT IS **THEREFORE ORDERED** THAT:

The County Health Plan's decision is **AFFIRMED**.

Lisa K. Gigliotti
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc: 

Date Mailed: 2/23/2010

***** 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.