

**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. 2010-22396 PA
Case No. [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.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on [REDACTED]. Appellant [REDACTED] appeared on her own behalf. [REDACTED] appeared on her behalf. [REDACTED], represented the Department. [REDACTED], appeared as a witness for the Department.

ISSUE

Did the Department properly deny coverage of Appellant's enteral nutrition for the time period [REDACTED]

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 Medicaid eligible.
2. Appellant is a [REDACTED] woman with gastroparesis. (Exhibit 1, pages 4, 7-12)
3. On [REDACTED], the Department received a request for prior authorization of 1,890 cans of enteral nutrition (Ensure Plus) (90 cans per month for the time period [REDACTED].) (Exhibit 1, pages 7-9)
4. The request was reviewed by the Department and was denied because 1) the durable medical equipment (DME) provider dispensed the Ensure prior to receiving a prior authorization in violation of Department policy, 2) the certificate of medical necessity attached to the prior authorization form was missing critical required information

including the date the height and weight was taken, 3) was missing how many total calories were requested per day, 4) was missing the method Ensure was to be administered, and 5) was missing a doctor's prescription. (Exhibit 1, pages 7-10)

5. The Department requested the missing information from the DME provider but a response to the request was never received by the Department. (Exhibit 1, pages 7-10).
6. On [REDACTED], the Department sent Appellant a written notice of denial. (Exhibit 1, page 9)
7. On [REDACTED] the Department received Appellant's request for an Administrative Hearing. (Exhibit 1, page 4)

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 Department Medicaid Provider Manual lists the criteria that a Medicaid beneficiary must meet in order for Medicaid to cover enteral nutrition such as Ensure:

2.13.A. ENTERAL NUTRITION (ADMINISTERED ORALLY)

Enteral nutrition (administered orally) may be covered for beneficiaries under the age of 21 when:

- A chronic medical condition exists resulting in nutritional deficiencies and a three month trial is required to prevent gastric tube placement.
- Supplementation to regular diet or meal replacement is required, and the beneficiary's weight-to-height ratio has fallen below the fifth percentile on standard growth grids. (Underline added.)
- Physician documentation details low percentage increase in growth pattern or trend directly related to the nutritional intake and associated diagnosis/medical condition.

For CSHCS coverage, a nutritionist or appropriate subspecialist must indicate that long-term enteral supplementation is required to eliminate serious impact on growth and development.

Standards of Coverage

For beneficiaries age 21 and over:

- The beneficiary must have a medical condition that requires the unique composition of the formula nutrients that the beneficiary is unable to obtain from food.
- The nutritional composition of the formula represents an integral part of treatment of the specified diagnosis/medical condition.
- The beneficiary has experienced significant weight loss.

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.
- Current laboratory values for albumin or total protein (for beneficiaries age 21 and over only).

For continued use beyond 3-6 months, **the CSHCS Program requires** a report from a nutritionist or appropriate pediatric subspecialist.

PA Requirements PA is required for all enteral formula for oral administration.

*MDCH Medicaid Provider Manual, Practitioner
Section, January 1, 2010, page 30.*

The Department's witness testified that there were several reasons why the prior authorization for Ensure was denied: 1) the DME provider dispensed the Ensure prior to receiving a prior authorization in violation of Department policy, 2) the certificate of medical necessity attached to the prior authorization form was missing critical required information including the date the height and weight was taken, 3) was missing how many total calories were requested per day, 4) was missing the method Ensure was to be administered, and 5)) was missing a doctor's prescription. (Exhibit 1, pages 7-10). The Department's witness stated that the missing information was requested from the DME provider but was never received by the Department. (Exhibit 1, page 10).

The Appellant testified that she was not aware the DME provider had not followed prior authorization criteria or followed up with additional information. It was discussed during hearing that Department billing policy does not allow the DME provider to bill the Appellant for its failure to follow Department policy.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department acted in accordance to policy when denying coverage of Appellant's enteral nutrition for the time period [REDACTED]

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

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

cc: [REDACTED]

Date Mailed: 05/25/2010

***** 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.