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. 2010-32467 QHP
Case No. [redacted]

[redacted],

Appellant
_____/

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ) 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 [redacted]. The Appellant's mother, [redacted], appeared on behalf of the Appellant. Dr. [redacted], appeared as a witness for the Appellant. [redacted], Director of Member Services, represented Health Plan of Michigan, Inc., the Medicaid Health Plan (MHP). [redacted], Registered Nurse/Manager of Clinical Services; [redacted], Associate Medical Director; and [redacted], Director of Pharmacy, appeared as witnesses for the MHP.

ISSUE

Did the MHP properly deny the Appellant's request for Protopic ointment?

FINDINGS OF FACT

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

1. The Appellant is a [redacted]-year-old Medicaid beneficiary who is currently enrolled in the Health Plan of Michigan, Inc., a MHP.

2. The Appellant was diagnosed with severe eczema when he was five or six months old. (Testimony of [redacted]; Exhibit 1, pages 13-15)

3. On [redacted], the MHP received a request from the Appellant's pediatrician, [redacted], for prior authorization of Protopic ointment to treat the Appellant's eczema. On [redacted], the MHP received a second prior authorization request from [redacted] and a request from the Appellant's allergist, [redacted], for Protopic ointment. (Exhibit 1, pages 13-15)

4. The Appellant has been using Protopic ointment for over a year. (Testimony of [redacted] and [redacted]).

5. On [redacted], the MHP sent the Appellant a denial notice, stating that it was denying the requests for Protopic because long-term use of the ointment should be avoided due to increased incidences of skin cancers and lymphoma, and the Appellant had already been using the ointment for an extended period of time. In addition, the MHP noted that other topical cortisteroids were available to treat the Appellant's eczema. (Exhibit 1, pages 7-12)

6. The Appellant's mother requested a formal, administrative hearing contesting the denial on [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.

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 MHPs.

> 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.

The DCH-MHP contract provisions allow prior approval procedures for utilization management purposes. The MHP's Director of Pharmacy testified that the Appellant's prior-authorization requests for Protopic were denied because of the MHP's concerns regarding the frequency and amount of usage of the ointment. He referred this ALJ to the "black box warning" for the product, which states, "Continuous long-term use of . . . PROTOPIC Ointment, in any age group should be avoided, and application limited to areas of involvement with atopic dermatitis. (Exhibit 1, page 24). He also noted that Protopic is to be used as a "*second-line* therapy for the short-term and non-continuous treatment of atopic dermatitis." (Exhibit 1, page 24) Further, contrary to the "black box warning" and the

usage guidelines, the Appellant has been on the ointment for an extended period—over one year—and has received a large (60 gram) tube every month during that time period, indicating excessive usage. (Testimony of [redacted] and [redacted]). The Director of Pharmacy further testified that there are other ointments available to treat the Appellant's eczema. (Testimony of Peltz)

The Appellant's allergist, [redacted], testified that the Appellant suffers from both environmental and food allergies. The effect of those allergies is atopic dermatitis or eczema. [redacted] testified that he prescribed the Protopic ointment for use as needed[1] on the Appellant's face. He prescribed other ointments[2] for use on the Appellant's body. He stated that the Protopic should only be used when the Appellant has flare ups. He explained that while he is aware of the "black box warning," other ointments have not been as successful, and he has concerns regarding use of the other ointments on the Appellant's face.[3]

The Appellant's mother testified that Protopic ointment is the only ointment that works for the Appellant. She stated that other ointments have been tried, but they were not successful. The Appellant's mother admitted that before [redacted], when she was advised otherwise by [redacted], she had been applying the ointment all over the Appellant's body and had done so for "a long time."

Again, the MHP "may limit services to those which . . . conform to professionally accepted standards of care." Here, the "black box warning" advises against long-term use of Protopic because of increased incidences of skin cancers and lymphoma. Further, the recommended usage is for short-term, non-continuous treatment. Given the extended period of use and the admitted over-application of the ointment by the Appellant's mother, the MHP's denial of the Appellant's prior-authorization requests 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 Protopic ointment.

1 Dr. [redacted]s [redacted] prior-authorization request did not state that the Protopic should be used as needed. He admitted that this was a clerical error. (Exhibit 1, page 14; Testimony of [redacted])
2 Elidel and Triamcinilone. (Testimony of [redacted])
3 Dr. [redacted] explained that a side effect of the other ointments is thinning of the skin, which is a concern when being used on the face. (Testimony of [redacted])

IT IS THEREFORE ORDERED that:

The MHP's decision is AFFIRMED.

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

cc: [redacted]

Date Mailed: 7/19/2010

***** 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.