

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

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IN THE MATTER OF:

██████████

Appellant

_____ /

Docket No. 2011-13394 QHP
Case No. 9858749

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 ██████████. ██████████, Appellant's ██████████, appeared on behalf of the Appellant. The Appellant was present and provided testimony.

██████████, represented the Medicaid Health Plan (MHP). ██████████ and ██████████, appeared as witnesses for the MHP.

ISSUE

Did the Medicaid Health Plan properly deny the Appellant coverage of Oxycontin?

FINDINGS OF FACT

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

1. The Appellant is a Medicaid beneficiary.
2. Appellant has been enrolled in the Medicaid Health Plan (MHP) since ██████████.
3. On ██████████, the MHP received a request from Appellant's neurologist, ██████████ for Oxycontin. Appellant's neurologist listed a general diagnosis of "chronic low back pain." (Exhibit 1, page 8).
4. OxyContin is a Schedule II narcotic, highly addictive, and which is often illegally diverted. (Testimony of MHP medical director).

5. The MHP drug formulary explicitly lists OxyContin as a non-covered medication. (Exhibit 1, pages 6-7).
6. An MHP clinical pharmacist, who is a licensed Pharm D., reviewed the request. Because OxyContin is a non-covered medication, the MHP clinical pharmacist contacted Appellant's neurologist for further information about other alternative medications he had tried with Appellant. Appellant's neurologist never responded to the MHP. (Exhibit 1, page 9).
7. The MHP clinical pharmacist reviewed all of the pharmacy claims for Appellant since his enrollment in ██████████, and discovered that Appellant had no claim history for any alternative pain medications similar to OxyContin. (Exhibit 1, page 10).
8. After failing to receive a response from Appellant's neurologist and after reviewing the Appellant's medication claims history, the MHP denied the request for OxyContin. On ██████████, the MHP sent the Appellant a denial notice stating the denial was based on the Appellant failing to meet the MHP formulary policy criteria; in particular documentation to establish alternative medications had been tried and failed. (Exhibit 1, page 2).
9. On ██████████, the Department received Appellant's request for an administrative hearing. (Exhibit 1, page 5).

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 contract between the Department and the Medicaid Health Plan allows a Medicaid Health Plan to limit services under specific circumstances:

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. (Bold emphasis added by ALJ).

Article 1, 1.022 E. 1, Comprehensive Health Care Program for the Michigan Department of Community Health (Contract) with the Medicaid Health Plans, 2010.

The contract between the Department and the Medicaid Health Plan allows a Medicaid Health Plan to formulate its own drug formulary.

Pharmacy

The Contractor may have a prescription drug management program that includes a drug formulary... The Contractor must have a process to approve physicians' requests to prescribe any medically appropriate drug that is covered under the Medicaid FFS program.

Article 1, 1.022 F. 7, Comprehensive Health Care Program for the Michigan Department of Community Health (Contract) with the Medicaid Health Plans, 2010.

The MHP Medical Director testified during the hearing that its medication coverage policy is consistent with Medicaid policy in that it is allowed to develop its own drug formulary. The formulary is reviewed annually by the Department of Community Health (DCH). The MHP clinical pharmacist introduced evidence establishing that its drug formulary explicitly prohibited the coverage of OxyContin, which meant it was a non-formulary medication.

The MHP clinical pharmacist testified that in order for a non-formulary medication to be considered for an exception to the non-coverage policy, the patient's physician must establish that pain medications in two different classes of pain medication categories had been tried and either did not work or had detrimental side effects.

The MHP clinical pharmacist explained that in Appellant's case there needed to be documentation from the Appellant's physician of a therapeutic trial, and documentation of a clinical failure of the therapeutic trial formulary MS Contin, or Fentanyl patches. The MHP clinical pharmacist testified that although the MHP contacted the Appellant's neurologist, the MHP never received physician progress notes documenting the therapeutic trial and clinical failure of MS Contin or Fentanyl patches.

The Appellant's ██████████ testified that he has to lift the Appellant from the floor, and help the Appellant walk. The Appellant's ██████████ said the Appellant weighs more than him and it is difficult to lift him from the floor or to help him

to walk. The Appellant's ██████████ also testified that it is difficult for him to listen to the Appellant breathing hard at night and to watch him falling out of bed. The Appellant testified that he needed OxyContin. The Appellant did not provide any medical documentation for the reason why someone needed to lift him up from the floor, to help him walk, or for falling out of bed.

The MHP Medical Director said that the MHP was concerned that the Appellant's neurologist prescribed the powerful and abused OxyContin drug, because typically OxyContin is prescribed by pain specialist doctors who follow prescribing protocols to address an individual's pain. The undisputed evidence in this case showed that the Appellant's neurologist, Dr. ██████████, did not provide any medical documentation that any class of pain medications had been tried and failed before requesting OxyContin. Further, the OxyContin requested from Dr. ██████████ did not describe a serious medical condition warranting the use of powerful narcotics such as end stage cancer. Instead the neurologist mentioned general lower back pain. The Appellant's neurologist did not submit with the request any objective medical tests, such as MRI or x-ray or specified blood tests, to support the prescribing of the highly addictive narcotic OxyContin. The MHP Medical Director gave as an example a situation where a non-formulary drug was covered under exception: if the pain specialist doctor prescribed OxyContin for a person in the end stages of cancer.

The Appellant bears the burden of proving, by a preponderance of the evidence, that he met exception criteria for coverage of a non-formulary narcotic. The Appellant did not prove by a preponderance of the evidence that he met criteria for exception approval of OxyContin. Although the Appellant and his representative provided testimony, he did not provide any medical documentation to meet the required evidentiary standard. As such, the MHP properly denied coverage of Oxycontin.


DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law decides that the Medicaid Health Plan properly denied the Appellant coverage of OxyContin.

IT IS THEREFORE ORDERED THAT:

The Medicaid Health Plan's decision is AFFIRMED.

Lisa K. Gigliotti
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health


Docket No. 2011-13394 QHP
Decision and Order

cc:



Date Mailed: 3/23/2011

***** 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.