

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P.O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

Docket No. 2011-18582 PHR
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]. [REDACTED] appeared on her own behalf. [REDACTED], represented the Department.

ISSUE

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

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.
3. On [REDACTED], a prior authorization request for Valium was received by [REDACTED], Appellant's family practice physician. Appellant's physician gave a diagnosis of anxiety. (Exhibit 1, page 5).
4. Valium is a medication that the drug manufacturer has not registered with the federal rebate program. (Exhibit 1, pages 7 and 10).
5. The request was denied because there is a prohibition against using Medicaid funds to pay for medications the drug manufacturer has not registered with the federal rebate program. (Exhibit 1, pages 7 and 10).

6. On ██████████, the Department sent Appellant a denial notice. (Exhibit 1, page 8).
7. On ██████████ the Department received Appellant's request for an Administrative Hearing. (Exhibit 1, page 2).

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.

Sec. 1927(d) [of the Social Security Act] [42 USC 1396r-8(d)] (In pertinent part)

(d) LIMITATIONS ON COVERAGE OF DRUGS. ---

(1) Permissible Restrictions -

(A) A state may subject to prior authorization any covered outpatient drug. (Exhibit 1 Page 11).

The Department is authorized by federal law to develop a formulary of approved prescriptions and to exclude specific drugs from coverage. Accordingly, the Department policy states:

SECTION 6 – GENERAL NONCOVERED SERVICES

This section specifies general coverage restrictions. However, drugs in other classes may not be covered. Pharmacies should review the MPPL for specific coverage. When possible, pharmacies are encouraged to suggest alternative covered therapy to the prescriber if a product is not covered.

The following drug categories are **not covered** as a benefit:

- Drugs of Labelers not participating in the Rebate Program.

MDCH Medicaid Provider Manual, Pharmacy Section, July 1, 2010, page 12. (Emphasis added).

The Appellant testified at hearing that sometimes she cannot focus on the tasks in front of her that day because of her anxiety. The Appellant stated that she prefers Valium because the generic form of Valium (diazepam) comes in different colors and has different binders depending on which pharmacy fills it and although the diazepam worked most of the time she did not like the diazepam pills filled by the ██████████ pharmacy.

Docket No. 2011-18582 PHR
Decision and Order

The Appellant stated she liked the diazepam filled at [REDACTED] which has a different color diazepam pill.

As stated below, the Department is prohibited from using Medicaid funds to pay for medications the drug manufacturer has not registered with the federal rebate program. Michigan Medicaid funds can be used to pay for the generic version of the medication.

The Department's representative testified that in Appellant's case, a Department physician reviewed the federal rebate non-registered medication reason for denial, and concurred with the denial. Although Medicaid cannot be used for the Valium brand name medication, it can pay for the generic, which it did in Appellant's case in the form of diazepam. (Exhibit 1, page 16). There was no further documentation from the physician to establish a need other than a generic.

The Department is prohibited from using Medicaid funds to pay for medications the drug manufacturer has not registered with the federal rebate program. Neither Appellant nor Appellant's physician established that Appellant met the criteria to have name brand Valium approved.

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 authorization of the drug Valium.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

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

cc:

[REDACTED]

Date Mailed: 5/11/2011

Docket No. 2011-18582 PHR
Decision and Order

***** NOTICE *****

The Michigan Administrative Hearing System 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 Michigan Administrative Hearing System 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.