

**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. 2011-16994 QHP
Case No. 54083331

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 as the Appellant's representative and interpreted at times for the Appellant. The Appellant was present, answered questions, and provided answers in English.

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

ISSUE

Did the Medicaid Health Plan properly deny the Appellant prior authorization?

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 was enrolled in the Medicaid Health Plan (MHP) in ██████████.
3. Appellant is ██████████ with erectile dysfunction. (Exhibit 1, page 7)
4. On ██████████, the MHP received a Drug Prior Authorization request from Appellant's physician, ██████████, for Depo-Testosterone. (Exhibit 1, page 7).
5. On the prescription attached to the Drug Prior Authorization Form the

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- Appellant's physician stated no reason the testosterone was needed. (Exhibit 1, page 7).
6. On the Drug Prior Authorization Form the sole diagnosis for which Appellant's physician indicated the Appellant needed Depo-Testosterone was "ED" (erectile dysfunction). (Exhibit 1, page 7; Testimony of MHP medical director).
 7. Erectile dysfunction is defined as "an inability to achieve penile erection." (American Heritage Dictionary).
 8. On ██████████, the request was forwarded to a MHP clinical pharmacist, ██████████, who reviewed the prior authorization (PA) form and attached prescription. (Exhibit 1, page 8).
 9. After reviewing the PA form and the attached prescription, ██████████ indicated that the request had to be denied because:

"Medications used for the treatment of sexual or erectile dysfunction are not a covered benefit per the Michigan Department of Community Health. Diagnosis for treatment is erectile dysfunction per request form." (Exhibit 1, page 8).
 10. The MHP sent the Appellant a denial notice stating the reason the Depo-Testosterone was denied as:

"Per the Michigan Department of Community Health Medicaid Provider Manual Pharmacy Section 9 Covered Services, medications used for the treatment of sexual or erectile dysfunction are not the covered benefit." (Exhibit 1, pages 2-3).
 11. 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 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 MHP Medical Director and Clinical Pharmacist testified during the hearing and introduced document evidence that its medication coverage policy is consistent with Medicaid policy. The MHP Clinical Pharmacist supported her statement by noting that the Department of Community Health Medicaid Provider Manual explicitly states that drugs used for the treatment of sexual or erectile dysfunction are not covered by Medicaid. (Exhibit 1, page 10).

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.

- **Agents used for treatment of sexual or erectile dysfunction** (Bold emphasis added by ALJ).

Medicaid Provider Manual, Section 6, Pharmacy, page 12.

Appellant's representative/translator testified that the Appellant needed Depo-Testosterone because he "was sick." When asked by this administrative law judge to describe what was meant by "sick" the Appellant's representative/translator wasn't able to provide any specific disease symptoms or diagnosis. The Appellant's representative/translator was asked to translate the question to the Appellant, which she

did, but the response from the Appellant through the translator did not provide any specific symptoms or diagnosis.

The Appellant stated in his request for hearing and in his testimony that he "was sick." The Appellant asked the Appellant in English to explain what he meant by "sick." The Appellant responded in competent English but could give no specific disease symptoms or diagnosis for why he claimed he was "sick." Neither the Appellant nor his representative could state exactly how he was sick. The Appellant bears the burden of proving, by a preponderance of the evidence, that the drug he requested was a Medicaid-covered service. The only evidence in the record of Appellant's diagnosis was erectile dysfunction.

This administrative law judge is limited to the medical evidence at the time the health plan made its decision. The medical documentation in evidence demonstrates that the Appellant's physician did not send any medical documentation along with the request form and prescription for the erectile dysfunction injection. The prescription only stated the milliliters requested per injection but gave no reason for the need for Depo-Testosterone. As stated unequivocally in the Medicaid policy listed above, Depo-Testosterone for erectile dysfunction is not a Medicaid-covered service, and therefore cannot be covered to treat the Appellant's erectile dysfunction.

The MHP is mandated to follow the federal law and state Medicaid policy. Michigan Medicaid policy prohibits the use of Medicaid funds to cover sexual or erectile dysfunction. It was proper for the MHP to deny approval of Depo-Testosterone.

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 prior authorization.

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

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cc:

Date Mailed: 3/16/2011

***** 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.