

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

██████████

Appellant

_____ /

Docket No. 2011-29591 PA

Case No. ██████████

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 ██████████. The Appellant appeared without representation. He had no witnesses. ██████████, Administrative Review Manager represented the Department. Her witness was ██████████ Medicaid Analyst/MDCH.

ISSUE

Did the Department properly deny Appellant's request for prior authorization (PA) of a contact lens?

FINDINGS OF FACT

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

- 1) At the time of hearing the Appellant is a ██████ year-old Medicaid beneficiary. Appellant's Exhibit #1.
- 2) The Appellant is afflicted with the visual disturbance of amblyopia, molecular scarring and double vision and a surgically detached retina in his left eye, the result of a ██████ closed head injury. See Testimony.
- 3) On ██████████, the Appellant's physician submitted a PA request for a contact lens via MSA-0892. Department's Exhibit A, pp. 8, 9.
- 4) On ██████████, following review of the Appellant's request for provision of a contact lens "right eye only" was denied for failure to meet requirement for low vision eye glasses based on Section 1 of the Vision chapter in the Medicaid Provider Manual. Department's Exhibit A, pp. 5, 8 and Testimony of ██████████.

- 5) The low vision eye glass services evaluation appears at Section 3.5 of the MPM, while the contact lens evaluation provision appears at Section 3.6. Department's Exhibit A, pp. 28, 29.
- 6) There was no request for additional information from the Department to the PA submitting physician. Department's Exhibit A, p. 7.
- 7) The Appellant's request for hearing was received by the Michigan Administrative Hearing System for the Department of Community Health on ██████████. Appellant's Exhibit #1.

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.

1.10 PRIOR AUTHORIZATION

Medicaid requires prior authorization (PA) to cover certain services before those services are rendered to the beneficiary. The purpose of PA is to review the medical need for certain services. . . .

Medicaid Provider Manual, (MPM)
Practitioner, July 1, 2011¹, page 4.

Under the general policy instructions for Medicaid related Vision services the MPM sets forth the following guidelines and requirements:

GENERAL GUIDELINES

The Michigan Department of Community Health (MDCH) contracts for the volume purchase of frames and lenses from an optical laboratory, referred to in this chapter as the contractor.

Vision providers, (e.g., opticians, dispensing ophthalmologists, optometrists) must order frames and lenses from the contractor. A list of lenses is available in the Vision Services Database located on the MDCH website. A list of available frames is available from the contractor, currently Classic Optical Laboratories. (Refer to the Directory Appendix for contact information.)

¹ This edition of the MPM is identical to the version in place at the time of negative action.

Orders placed with the contractor must be postmarked no later than 30 days after the date of order. If orders are placed beyond the 30 days, the contractor returns the order to the provider, who must explain to Medicaid why submission was delayed and request an exception from the time limit.

Procurement of contact lenses, low vision aids, and prosthetic eyes must be obtained from the vision provider's own source and are subject to prior authorization (PA) requirements as described in this chapter.

MPM, §1, Vision July 1, 2011, page 1

In the preamble to the Vision Chapter a legislative history summarized the rescission of the vision benefit for beneficiaries over age 21 by way of executive order 2009-22 on July 1, 2009; then its reinstatement by way of Public Act 187 of 2010 for dates of service on or after October 1, 2010. Thereafter low vision services were payable for beneficiaries age 21 and greater. Included as payable were the items of low vision eye glasses, contact lenses, optical devices, and other related low vision supplies and services.

The Department denied the Appellant's request under section 3.5 (Low Vision Services) of the Vision Chapter:

Evaluation

A low vision evaluation is a benefit when the beneficiary presents with moderate visual impairment, severe visual impairment, or profound visual impairment as defined in the ICD-9-CM. Under these conditions, a low vision evaluation does not require PA. This evaluation includes, but is not limited to, a detailed case history, effectiveness of any low vision aids in use, visual acuity in each eye with best spectacle correction, steadiness of fixation, assessment of aids required for distance vision and near vision, evaluation of any supplemental aids, evaluation of therapeutic filters, development of treatment, counseling of beneficiary, and advice to family (if appropriate).

The CPT E/M or General Ophthalmological procedure code which best describes this service should be utilized.

Aids High add bifocals do not require PA. For high add bifocals, complete the DCH-0893 and submit to the contractor.

The prescription and fitting of low vision optical aids (such as telescopes, microscopes, and certain other low vision aids) require PA.

Only basic and essential low vision aids are a Medicaid benefit.

The Provision of Low Vision Services and Aids Support Documentation (MSA-0891) form outlines the information required when requesting PA for low vision services and aids. A sample of this form is provided in the Forms Appendix. It can also be obtained through the MDCH website. (Refer to the Directory Appendix for website information.)

This form must be attached to DCH-0893 and submitted as part of the PA process. (Refer to the Prior Authorization subsection above.)

Reimbursement for a low vision aid is based on the manufacturer's charge for the aid plus a professional fee. Procurement of the low vision aid is done through the vision provider's own source. The professional fee includes procurement, verification, and fitting of the aid.

Only an enrolled optometrist or a dispensing ophthalmologist can bill for a low vision aid.

.... [omitted by ALJ]

MPM, §3.5, Vision, July 1, 2001, page 11.

The operative Public Act referenced in the preamble to the Vision Chapter of the MPM (PA 187) sets forth the requirement for prospective allocations of funds for, among other things "vision services" and further requires:

In addition to the guidelines established in Medical Services Administrative bulletin MSA 09-28, medically necessary optical devices and other treatment services for adult Medicaid patients shall be covered when conventional treatments do not provide functional vision correction. Such ocular conditions include, but are not limited to, congenital or acquired ocular disease or eye trauma. (Emphasis supplied)

Public Act 187 of 2010 at § 1836

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At the hearing the Department witness, ██████████ testified that the Appellant's request was denied under the Low Vision section of the chapter because he did not meet the criteria for low vision eye glasses. The Appellant's PA clearly requested authorization for one contact lens to further correct vision in the Appellant's undamaged eye – thus enabling him to wear a medically necessary eye patch on his non-repairable left eye to which he sustained serious injury on ██████████ ██████████

The Department witness maintained that the lens request was nevertheless denied because the Appellant's vision is subject to "improvement." The Appellant said that the only option left to him ██████████ after the fact is surgical detachment of his left retina.

In order to reach the conclusion brought by the Department it would be necessary to disregard the plain language of PA 187 requiring medically necessary treatment for adult Medicaid beneficiaries - the victim of eye trauma like the Appellant here today.

The companion policy referenced by the Department reinstates coverage for low vision eyeglasses, contact lenses, optical devices...but does not state whether or not low vision contact lenses or low vision optical devices are included anywhere in the re-coverage policy. Accordingly, existing, [non-rescinded] Medicaid policy and the underlying Public Act are controlling.

The MPM Vision Chapter at §3.6 states in pertinent part:

A comprehensive contact lens evaluation is a Medicaid benefit and does not require PA when the beneficiary presents with one of the following conditions, and visual performance is expected to be significantly improved with the application of a contact lens(es): (Use appropriate HCPCS comprehensive contact lens evaluation code.)

- Aphakia (congenital or surgical)
- Keratoconus (if vision cannot be improved to 20/40 or better with eyeglasses)

² 2) Orbit fracture.
3) Possible injury to the eye.

Plan: 1) The eyelid wounds will be repaired.
2) Ophthalmologic consultation will be obtained.
3) CT scans will be reviewed to consider possible orbital surgery in the near future.

ADDENDUM: Since the history and physical was initially dictated, the patient's eye has been examined additionally in the operating room. The pupils are definitely unequal, with the left one being irregular. I could not bring the fundus into view sharply with the use of the ophthalmoscope. Also, the CT scans were reviewed. The patient does have a significant orbital floor fracture with a considerable amount of displacement and there appears to be some herniation of the orbital contents. The left maxillary sinus is completely opacified with blood. There is an essentially non-displace fracture of the orbital roof. The lateral orbital wall also appears to be non-injured, or at least non-displaced. There is an air fluid level in the sphenoid sinus on the left side.

- Anisometropia or Antimetropia (of two diopters or greater that results in aniseikonia)
- Congenital cataracts up to age six
- Other conditions which have no alternative treatment.
(Emphasis supplied)

MPM, *Supra* page 12

The Appellant said that he would enjoy a “significant improvement” in vision [as was supported in his MSA-0982] and that he has no alternative treatment available to restore functional use to his left eye.

On review, I find that the Appellant’s visual performance would be significantly improved through application of one contact lens – since no treatment remains for his existing eye trauma.

The Appellant has preponderated his burden of proof to establish medical necessity for coverage of one contact lens.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department improperly denied the Appellant’s request for PA of one contact lens.

IT IS THEREFORE ORDERED that:

The Department’s decision is REVERSED.

Dale Malewska
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:



Date Mailed: 7/11/2011

***** 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.