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:

[redacted],

Docket No. 2012-23984 QHP
Case No [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], the Appellant, appeared and testified.

[redacted] Inquiry Dispute Appeals Resolution Coordinator, represented [redacted], the Medicaid Health Plan (MHP). [redacted], Medical Director, and [redacted], Pharmacy Director, appeared as witnesses for the MHP.

ISSUE

Did the Medicaid Health Plan properly deny the Appellant's request for Depo-Testosterone?

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 [redacted] year-old Medicaid beneficiary.

2. On [redacted], the MHP received a prior authorization request from the Appellant's doctor for Depo-Testosterone for diagnoses of hypogonadism and organic impotence. (Exhibit 1, pages 6-8)

3. On [redacted], the MHP sent the Appellant a denial notice, stating that the request for Depo-Testosterone was denied based on the Michigan Department of Community Health Medicaid Provider Manual, which states that medications used for treatment of sexual or erectile dysfunction are not a covered benefit. (Exhibit 1, pages 2-4)

4. On [redacted], the Appellant's appeal request was received.

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 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. Contractors 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 1-Z.
>
> *Article II-G, Scope of Comprehensive Benefit Package. MDCH contract (Contract) with the Medicaid Health Plans, September 30, 2004.*

> The major components of the Contractor's utilization management plan must encompass, at a minimum, the following:
>
> - Written policies with review decision criteria and procedures that conform to managed health care industry standards and processes.
> - A formal utilization review committee directed by the Contractor's medical director to oversee the utilization review process.

- Sufficient resources to regularly review the effectiveness of the utilization review process and to make changes to the process as needed.
- An annual review and reporting of utilization review activities and outcomes/interventions from the review.

The Contractor must establish and use a written prior approval policy and procedure for utilization management 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 utilization management decisions be made by a health care professional who has appropriate clinical expertise regarding the service under review.

Article II-P, Utilization Management, Contract, September 30, 2004.

As stated in the Department-MHP contract language above, a MHP, "must operate consistent with all applicable Medicaid Provider Manuals and publications for coverage and limitations." The pertinent section of the Michigan Medicaid Provider Manual (MPM) 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:

- Agents used for anorexia or weight loss.
- Agents used for weight gain.
- Agents used for cosmetic purposes or hair growth.
- Agents used for symptomatic relief of cough and colds.
- Experimental or investigational drugs.
- Agents used to promote fertility.
- Agents used to promote smoking cessation not on the MPPL.

- Vitamin/Mineral combinations not for prenatal care, end stage renal disease or pediatric fluoride supplementation.
- Covered outpatient drugs that the Labeler seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the Labeler or their designee.
- Covered outpatient drugs where the Labeler limits distribution.
- Proposed less-than-effective (LTE) drugs identified by the Drug Efficacy Study Implementation (DESI) program.
- Over-the-counter drugs not on the MPPL.
- Drugs of Labelers not participating in the Rebate Program.
- Drugs prescribed for "off label" use if there is no generally accepted medical indication in peer reviewed medical literature (Index Medicus), or listing of such use in standard pharmaceutical references such as Drug Facts and Comparisons, AMA Drug Evaluations, American Hospital Formulary Service Drug Information, or DRUGDEX Information Systems.
- Drugs prescribed specifically for medical studies.
- Drugs recalled by Labelers.
- Drugs past CMS termination dates. (Refer to the Directory Appendix for CMS website information.)
- Lifestyle agents.
- Standard Infant Formulas.
- Drugs used to treat gender identity conditions, such as hormone replacement.
- Drugs covered by the Medicare Part D benefit.
- Drugs not FDA approved or licensed for use in the United States.
- Agents used for treatment of sexual or erectile dysfunction.

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In this case, the prior authorization request listed diagnoses of hypogonadism and organic impotence. (Exhibit 1, page 6) The attached lab report documents the Appellant's testosterone level was 233 ng/dL with a footnote indicating the range for adult males is 241-826 NG/DL. (Exhibit 1, page 8) However, the clinical notes and the Appellant's testimony indicate the Depo-Testosterone was requested to treat erectile dysfunction. (Medical Director Testimony, Appellant Testimony and Exhibit 1, page 7) The above cited Medicaid Provider Manual Policy specifies that agents used for treatment of sexual or erectile dysfunction are not a covered benefit. Accordingly, the

MHP properly denied the Appellant's prior authorization request.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the MHP properly denied the Appellant's request for Depo-Testosterone based upon the information available.

IT IS THEREFORE ORDERED that:

The Medicaid Health Plan's decision is AFFIRMED.

Colleen Lack
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: 3/21/2012

***** NOTICE *****

The Michigan Administrative Hearing System 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.