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. [redacted] 2012-23990 QHP [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.,* following the Appellant's request for a hearing.

After due notice, a hearing was held [redacted]. The Appellant represented herself.

Priority Health was represented by [redacted], [redacted]. Priority Health is a Department of Community Health contracted [redacted]).

ISSUE

Did the Respondent properly deny the Appellant's request for Avapro?

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 Respondent, Priority Health, is a Department of Community Health contracted [redacted]

2. The Appellant is a Medicaid beneficiary who was enrolled in the Respondent [redacted]. (uncontested)

3. The Appellant's physician submitted a prior authorization request for Avapro on or about [redacted].

4. The requested medication is a non-formulary medication for Priority Health.

5. The [redacted] reviewed the request for Avapro under its non-formulary exception criteria and determined that denial was proper because there was no evidence of trial and failure of a generic medication for her condition, as well as a formulary medication.

6. The [redacted] notified the Appellant of the denial determination.

7. On [redacted], the Department received the Appellant's Request for Hearing.

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. 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.
>
> *Section 1.022(E)(1), Covered Services.*
> *MDCH contract (Contract) with the Medicaid Health Plans,*
> *October 1, 2009.*
>
> (1) The major components of the Contractor's utilization management (UM) program must encompass, at a minimum, the following:

(a) Written policies with review decision criteria and procedures that conform to managed health care industry standards and processes.
(b) A formal utilization review committee directed by the Contractor's medical director to oversee the utilization review process.
(c) Sufficient resources to regularly review the effectiveness of the utilization review process and to make changes to the process as needed.
(d) An annual review and reporting of utilization review activities and outcomes/interventions from the review.
(e) The Um activities of the Contractor must be integrated with the Contractor's QAPI program.

(2) Prior Approval Policy and Procedure

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

Section 1.022(AA), Utilization Management, Contract, October 1, 2009.

As stated in the Department-MHP contract language above, a MHP "must operate consistent with all applicable Medicaid Provider Manuals and publications for coverages and limitations." Finally, the Contract also requires that:

[Pharmacy]

(a) The Contractor may have a prescription drug management program that includes a drug formulary. DCH [the Department] may review the Contractor's formularies regularly, particularly if enrollee complaints regarding access have been filed regarding the formulary. The Contractor agrees to have a process to approve physician's requests to prescribe any medically

> appropriate drug that is covered under the Medicaid FFS program.
>
> Contract §II-H (8) p. 39

The [redacted] explained that it denied the Appellant's request for Avapro because it is non-formulary. It identified multiple formulary alternatives and also indicated a generic medication for her condition must be trialed as well. The witness stated there was no documentation supporting a generic had been trialed, nor a formulary medication.

The Appellant stated she has been on this particular medication for at least [redacted]. She said she had been in an automobile accident and the medication had been covered by her automobile insurance company. They stopped covering it because they declared her high blood pressure unrelated to the accident. That is why she sought coverage for this medication from the [redacted].

While this ALJ sympathizes with the Appellant's circumstances, the MHP's denial must be upheld. The contract between MDCH and the [redacted] allows establishment of a formulary and prior authorization process. In this case the medication requested is non-formulary and utilization control process authorized by MDCH allows for the process to require trial and failure of a generic as well as a formulary medication for the Appellant's medical condition before approving coverage of the requested medication.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that that the Medicaid Health Plan properly denied the Appellant's request for Avapro.

IT IS THEREFORE ORDERED that:

The Medicaid Health Plan's decision is AFFIRMED.

Jennifer Isiogu
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: 4-11-12

***** 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.