

**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:

Docket No. 2012-34981 QHP

██████████

██████████

██████████

Appellant

_____ /

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ) 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 ██████████ ██████████, the Appellant, appeared on his own behalf. ██████████, Senior Attorney, ██████████, represented ██████████, a Medicaid Health Plan (MHP). ██████████, Medical Director, ██████████ testified for ██████████

ISSUE

Did ██████████ properly deny the Appellant's request for Caverject?

FINDINGS OF FACT

Based upon the competent, material, and substantial evidence presented, I find, as material fact:

1. The Appellant is a ██████-year-old Medicaid beneficiary who is currently enrolled in the ██████████ (Omni Care), a MHP.
2. ██████████ is under contract with the Michigan Department of Community Health (Department) to provide medical necessary Medicaid covered services to Medicaid beneficiaries enrolled with ██████████
3. The Appellant has been diagnosed with paraplegia from a cervical spine injury involving C6 and C7 vertebrae. The Appellant is wheelchair bound. The Appellant's physician diagnosed the Appellant with erectile dysfunction 344.1.
4. On ██████████ received a request from the Appellant's physician for prior authorization of Caverject to treat the Appellant's diagnosis of erectile dysfunction. (Exhibit I, p 3)

5. The Appellant requested medication from his physician to treat the Appellant's erectile dysfunction related to the Appellant's spinal injury.
6. The Social Security Act at section 1927(d) (K) and at section 1903(i) (21) prohibit the use of Medicaid funds to pay for agents when used for the treatment of sexual or erectile dysfunction unless such agents are used to treat a condition, other than sexual or erectile dysfunction, for which the agents have been approved by the Food and Drug Administration.
7. Michigan Medicaid policy does not allow for the coverage of agents used for treatment of sexual or erectile dysfunction. *Medicaid Provider Manual, Pharmacy Chapter, January 1, 2011, page 12.*
8. On ██████████ sent the Appellant and his physician a Denial Notice, which informed the Appellant that his physician request for Caverject was denied because Caverject is not a covered drug according to the current administrative guidelines. Exhibit 1 pp11-14.
9. On ██████████, the Michigan Administrative Hearing System received the Appellant's request for an administrative 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 MHPs.

The Respondent is one of those MHPs.

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.*

The contract between the Department and [REDACTED] permits [REDACTED] to use prior approval procedures for utilization management purposes.

The following facts are not in dispute. The Appellant is a [REDACTED]-year-old male who has been diagnosed with paraplegia and erectile dysfunction. [REDACTED], the Appellant's physician submitted a prior authorization request to [REDACTED] for the medication Caverject for treatment of the Appellant's erectile dysfunction. On [REDACTED] [REDACTED] sent the Appellant and his physician a denial notice which informed the Appellant and his physician that the request for Caverject was denied because the medication was not covered by Medicaid. On [REDACTED], the Michigan Administrative Hearing System received the Appellant's request for hearing.

[REDACTED] testified for [REDACTED] that the Appellant's prior authorization request for Caverject was denied because medication to treat erectile dysfunction is not covered by the Medicaid program. [REDACTED] testified that the Medicaid provider pharmacy manual provides that drugs to treat erectile dysfunction are not covered. [REDACTED] provided a [REDACTED], Medical Services Administration policy bulletin addressing the termination of sexual or erectile dysfunction drug coverage for Medicaid beneficiaries. (Exhibit 1, p.25)

The Appellant testified that his physician has prescribed Caverject for many years and [REDACTED] has always paid for the medication. The Appellant testified that he did not understand why [REDACTED] was now denying the medication.

Section 6 of the Pharmacy chapter of the Medicaid Provider Manual, effective January 1, 2011, addresses general non-covered services. A listing of drug categories that are not covered as a benefit includes "Agents used for treatment of sexual or erectile dysfunction." *Medicaid Provider Manual, Pharmacy Chapter, January 1, 2011, page 12.* The Department's Medicaid policy is based on 2005-2006 amendments to the Social Security Act. The Social Security Act at section 1927(d) (K) and at section 1903(i) (21) prohibit the use of Medicaid funds to pay for agents when used for the treatment of sexual or erectile dysfunction unless such agents are use to treat a condition, other than sexual or erectile dysfunction, for which the agents have been approved by the Food and Drug Administration.

The Department's policy and [REDACTED] medication coverage criteria are consistent with the Social Security Act provisions. Therefore I find [REDACTED] properly considered the Appellant's prior authorization request and properly applied applicable policy and law when it denied the Appellant's request for Caverject.

DECISION AND ORDER

The ALJ, based on the above findings of fact and conclusions of law, decides that [REDACTED] properly denied the Appellant's request for Caverject.

[REDACTED]
Docket No. 2012-34981QHP
Decision and Order

IT IS THEREFORE ORDERED that:

[REDACTED] Health Plan's decision to deny the Appellant's prior authorization request is **AFFIRMED**.

Martin D. Snider
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.