

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) 373-4147

IN THE MATTER OF:

██████████,¹

Appellant.

Docket No. 2013-20321 QHP
Case No. ██████████

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37, and upon a request for a hearing filed on behalf of the minor Appellant.

After due notice, a hearing was held on ██████████. ██████████, Appellant's mother, appeared and testified on Appellant's behalf. Attorney ██████████ appeared on behalf of ██████████ Plan of Michigan (██████████). ██████████, Director of Member Services, and Dr. ██████████, D.O., appeared as witnesses for ██████████.

ISSUE

Did ██████████ properly deny Appellant's request for genetic testing?

FINDINGS OF FACT

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

1. Appellant was born ██████████ and was ██████ years-old at the time of the hearing. (Respondent's Exhibit A, page 9).
2. Appellant underwent a consultation with a neurologist in ██████████. (Respondent's A, pages 9-12).

¹ Appellant's name was mistakenly listed as "██████████" in the Notice of Hearing. However, both parties indicated that they were aware of the mistake and received sufficient notice of the hearing. They were also prepared for a hearing with respect to the denial of Appellant's request for genetic testing.

3. In the report following that consultation, the neurologist wrote:

This is a 22-month-old who is here for communication defect with poor social interaction and also some stereotypical behavior concerning for autism. [Respondent's Exhibit A, page 11.]

4. The report also identified a plan for Appellant's care, including neuropsychological testing for autism, an MRI of the brain with and without contrast, and

In addition, we will do genetic testing- CGH, Fragile X and Karyotype. In addition to metabolic testing including TSH, T3, and T4, to look for the cause for the developmental delay. [Respondent's Exhibit A, page 11.]

5. Pursuant to the neurologist's report, Appellant's Primary Care Physician submitted a prior authorization request to ██████████ on ██████████ for genetic testing. The neurologist's report was attached to the prior authorization request. (Respondent's Exhibit A, pages 7-12).

6. On ██████████, Meridian sent Appellant written notice that the prior authorization request had been denied. (Respondent's Exhibit A, pages 13-18).

7. Regarding the reason for the denial, the notice provided:

A ██████████ Health Plan (██████████) physician reviewer has reviewed this request and determined that it does not meet the criteria for coverage for genetic testing. The notes sent show you have a developmental delay with characteristics of autism. The notes sent do not show how the test results are expected to impact your treatment care plan and result in a significant clinical difference for you as required by the ██████████ medical policy for genetic testing. Also conventional diagnostic testing, such as MRI (imaging) or blood tests have not been done or sent in for review to show that a definitive diagnosis could not be made and a hereditary diagnosis is suspected. Lastly, the requested genetic testing is not considered diagnostic with high sensitivity and/or specificity. Please follow up with your physician to discuss and plan other care options. [Respondent's Exhibit A, page 14.]

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8. Appellant underwent an MRI on [REDACTED]. (Respondent's Exhibit A, pages 20-21).
9. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received a request for hearing filed by Appellant's mother/representative on behalf of her "son".
10. MAHS identified another son of Appellant's representative as the appellant. Moreover, as the request was not signed by any appellant and did not indicate that the appellant was a minor or had a legal guardian, MAHS sent a letter indicating that MAHS required a signature from the appellant or documentation regarding a guardianship in order to move forward.
11. On [REDACTED], MAHS received clarification that Appellant's mother/representative filed the appeal on the behalf of Appellant, who is only [REDACTED] years-old.
12. The matter was subsequently scheduled for hearing and, as discussed above, the hearing was held on [REDACTED].

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 in one of those Medicaid Health Plans and, regarding such plans, the Michigan Medicaid Provider Manual (MPM) states:

SECTION 1 – GENERAL INFORMATION

The Michigan Department of Community Health (MDCH) contracts with Medicaid Health Plans (MHPs), selected through a competitive bid process, to provide services to Medicaid beneficiaries. The selection process is described in a Request for Proposal (RFP) released by the Office of Purchasing, Michigan Department of Technology,

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Management & Budget. The MHP contract, referred to in this chapter as the Contract, specifies the beneficiaries to be served, scope of the benefits, and contract provisions with which the MHP must comply. Nothing in this chapter should be construed as requiring MHPs to cover services that are not included in the Contract. A copy of the MHP contract is available on the MDCH website. (Refer to the Directory Appendix for website information.) MHPs must operate consistently with all applicable published Medicaid coverage and limitation policies.

(Refer to the General Information for Providers and the Beneficiary Eligibility chapters of this manual for additional information.) Although MHPs must provide the full range of covered services listed below, MHPs may also choose to provide services over and above those specified. **MHPs are allowed to develop prior authorization requirements and utilization management and review criteria that differ from Medicaid requirements.** The following subsections describe covered services, excluded services, and prohibited services as set forth in the Contract.

[MPM, Michigan Health Plan (MHPs) Chapter, October 1, 2012 version, pages 1-2 (emphasis added.)]

Here, the MHP has properly developed utilization guidelines for genetic testing and those guidelines include the following criteria:

III. Criteria:

- 1 .No prior authorization or review is required for fetal genetic testing.
2. Genetic testing is considered a clinical option for patients when testing will impact the member's treatment plan and result in a significant clinical difference for the member.
- 3 .Unless pregnancy related (see #1), Genetic Testing must be prior-authorized by Meridian Health Plan and meet all of the following documentation of medical necessity to be considered for approval:
 - a. The test results are expected to both impact the treatment care plan and

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- result in a clinical difference for the member, and documentation of the difference is required.
- b. The member displays clinical features or is at a high risk of inheriting the mutation.
 - c. History, physical examination, pedigree analysis and completion of conventional diagnostic studies fail to return a definitive diagnosis and a hereditary diagnosis is suspected.
 - d. The genetic testing must be ordered by a specialist within the scope of their practice or a genetic counselor working under direction of a specialist. Primary care physicians will not generally meet this test.
 - e. Testing is accompanied by both pre and post test counseling where the possible risks and benefits of early detection are reviewed and accepted by the member.
 - f. Evidence that the requested test is considered diagnostic with high sensitivity and specificity.
 - g. Genetic testing for cancer for a beneficiary with a personal history of a relevant cancer.

[Respondent's Exhibit A, pages 22-23.]

In this case, ██████████ primarily denied the prior authorization request because there is nothing in the request or the documentation accompanying the request indicating that the genetic testing would have any effect in Appellant's treatment. As clearly stated in the above policy, genetic testing may only be approved where "testing will impact the member's treatment plan and result in a significant clinical difference for the member". (Respondent's Exhibit A, page 22). Here, the only reason given in the request and the neurologist's report for the request for genetic testing is "to look for the cause for the developmental delay." (Respondent's Exhibit A, page 11). Such a reason is insufficient under policy as nothing indicates any impact or clinical difference the testing would have for Appellant. Moreover, Dr. ██████████ testified that, even if the genetic testing did

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reveal the cause of Appellant's developmental delay, his treatment would be the same. (Testimony of Dr. [REDACTED]).

In response, Appellant's representative testified that they made the request pursuant to the neurologist's plan and that Appellant's doctors would like the information. However, she also acknowledges that the documentation submitted does not indicate that the requested testing would impact the Appellant's treatment plan and result in a significant clinical difference for Appellant. Accordingly, based on the submitted documentation and the applicable policy, Meridian's decision must be affirmed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Meridian properly denied the Appellant's request for genetic testing.

IT IS THEREFORE ORDERED that:

The Medicaid Health Plan's decision is **AFFIRMED**.

Steven Kibit

Steven Kibit
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

cc: [REDACTED]

Date Mailed: 4/24/2013

***** 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 60 days of the mailing date of the Decision and Order or, if a timely request for rehearing was made, within 60 days of the mailing date of the rehearing decision.