

**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:

Docket No. 2013-19905 QHP
Case No. 32082692

██████████
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 March 5, 2013. ██████████, the Appellant, and ██████████, wife, were present. Alexandria Zeigler, Inquiry Dispute Appeals Resolution Coordinator, represented Molina Healthcare of Michigan, the Medicaid Health Plan ("MHP"). Dr. Keith Tarter, Medical Director, appeared as a witness for the MHP.

ISSUE

Did the MHP properly deny Appellant's prior authorization request for Advair 250/50?

FINDINGS OF FACT

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

1. The Appellant is a Medicaid beneficiary who is currently enrolled in the Respondent MHP.
2. On November 1, 2012, the MHP received a prior authorization request for Advair 250/50 for the Appellant. The Appellant's diagnoses were listed as shortness of breath, asthma and dyspnea. Regarding previous formulary medication trials, ProAir HFA 90 mcg, Provenril HFA 90 mcg and Alupent 650 mcg were listed but the length of treatment and outcomes with dates were not provided. (Exhibit 1, page 5)
3. On November 15, 2012, the MHP sent the Appellant's doctor's office a faxed request for additional information. (Exhibit 1, pages 3-4)

4. On November 15, 2012, the MHP determined the prior authorization request was denied based on failure to provide additional information as required by the prior authorization request procedure located in the Molina Healthcare of Michigan Drug Formulary. (Exhibit 1, page 2)
5. On November 15, 2012, the MHP issued a denial letter to the Appellant and his doctor indicating the decision was based on formulary policy. (Exhibit 1, pages 8-11)
6. On December 17, 2012, the Appellant's Request for Hearing was received by the Michigan Administrative Hearing System.

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 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:

- 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 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,
MDCH contract (Contract) with the Medicaid Health Plans,
October 1, 2009.*

The DCH-MHP contract provisions allow prior approval procedures for utilization management purposes. The MHP Medical Director explained that the MHP has a formulary. For the cortico-steroids for inhalation, like the requested Advair 250/50, the formulary states:

4.4.5 Cortico-steroids For Inhalation

- Inhaled corticosteroids are useful for chronic maintenance treatment and prevention of asthma/COPD symptoms. They should be considered as first-line

therapy for patients with moderate to severe, chronic symptoms of asthma.

- Inhaled corticosteroids are not effective for PRN treatments of acute symptoms.
- Use of short-acting inhaled beta-2 agonists more than 2 times a week may indicate the need to initiate long-term control therapy.
- **ONLY ONE INHALED CORTICOSTEROID COVERED PER MONTH**

Beclomethason	QVAR
Budesonide	PULMICORT RESPULES (no PA for members 9 and under)
Budesonide	PULMICORT FLEXHALER (Step Therapy; Two month trial of QVAR)
Mometasone	ASMANEX (Step Therapy; Two month trial of QVAR)
Mometasone/Formoterol	DULERA (Step Therapy; Two month trial of ICS)

PRIOR AUTHORIZATION REQUIRED

Fluticasone/Salmeterol ADVAIR

Budesonide/Formoterol SYMBICORT

The MHP reviewed the information provided by the Appellant's doctor's office and the Appellant's prescription claims history since returning to the MHP October 1, 2012. The available information was not sufficient. Accordingly, the MHP denied the Appellant's request for Advair 250/50. (Exhibit 1, pages 2-4; Medical Director Testimony) The Medical Director asserted that additional information was requested on November 2, 2012 from the Appellant's doctor's office, but there is no documentation of this in the MHP's evidence. Rather, the Pharmacy Director Consultation Form does not have any date entered for "Date Request Add'l Info" and the faxed request for additional information is dated November 15, 2012, the same date the denial notice was issued. (Exhibit 1, pages 2-4 and 8-11)

The Appellant disagrees with the denial. The Appellant and his wife testified the doctor's office has sent over the requested information three times, but the medication is still denied. The Appellant was previously enrolled with the MHP and Advair was

covered for several years. Then the Appellant was incarcerated, and could only take what was provided there. The Appellant had a trial with QVAR for three months, but it did not work. A recent prior authorization request for Advair was re-submitted 2-3 months prior to the March 5, 2013 hearing, but the Appellant is still not getting the medication he needs. The Appellant just wants to be able to take his medication, the one recommended by his doctor, and the one that works best for him. (Appellant and Wife Testimony)

This hearing is limited to the November 15, 2012 denial. As discussed during the telephone hearing proceedings, the MHP will look into the more recent prior authorization request, and if needed the Appellant can appeal the new determination or a failure to make a determination on the new request.

The MHP's formulary and medication prior approval process is consistent with Medicaid policy and allowable under the DCH-MHP contract provisions. The MHP demonstrated that based on the information it had at the time the November 15, 2012 denial decision was made, the Appellant did not meet criteria for approval of Advair. The November 1, 2012, prior authorization request form asks for "previous formulary medication trials: (Length of Treatment/outcome with dates)." In response, three medications were listed, but the length of treatment and outcomes with dates were not provided. Additionally, QVAR was not one of the listed medications that had been trialed. (Exhibit 1, page 5) Accordingly, the MHP's determination must be upheld.

At any time the Appellant can have a new prior authorization request for Advair submitted to the MHP with additional documentation supporting the medical necessity of the requested medication. Additionally, a new hearing request can be filed within 90 days of any denial or regarding a failure to act with reasonable promptness on a request for a Medicaid covered service.

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 Advair 250/50 based upon the available information.

IT IS THEREFORE ORDERED that:

The Medicaid Health Plan's decision is AFFIRMED.

/S/

Colleen Lack
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

[REDACTED]
Docket No. 2013-19905 QHP
Decision and Order

cc:

[REDACTED]

Date Mailed: 3/13/2013

***** 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 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.