

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:

██████████,

Appellant

Docket No. 2013-29464 QHP

Case No. ██████████

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 ██████████. The Appellant appeared without representation. He had no witnesses. ██████████, attorney, represented the Medicaid Health Plan (MHP). His witness was ██████████ pharmacist, ██████████, Phr.

ISSUE

Did the Medicaid Health Plan properly deny Appellant's prior authorization (PA) request for the medication Zemaira?

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 ██████-year-old Medicaid-SSI beneficiary. (Appellant's Exhibit #1)
2. The Appellant is afflicted with COPD, GERD, sleep apnea, closed head injury, DM-2, OA, HTN, CAD and abdominal pain. (Appellant's Exhibit #1 and Respondent's Exhibit A, p. 56)
3. His physician, on ██████████ submitted a request for the medication Zemaira. (Respondent's Exhibit A, p. 3)
4. On ██████████ the request for Zemaira was denied for failure to meet the MHP drug approval criteria for that medication. (Respondent's Exhibit A, pp. 3 and 5)
5. The Respondent's witness testified that the MHP denial was sent out for expert, independent review – which confirmed their decision. (See Testimony of ██████████)

**Docket No. 2013-29464 QHP
Decision & Order**

6. The MHP advised the Appellant and his provider that the independent reviewer of the request for Zemaira stated that using that medication to treat a patient with his genetic phenotype and with his serum alpha-1 antitrypsin level is not considered the standard of care. (Respondent's Exhibit A, p. 85)
7. The requesting healthcare provider and the Appellant were advised of the denial on [REDACTED] and thereafter on [REDACTED]. His further appeal rights were contained therein. (Respondent's Exhibit A, pages 13 through 30)
8. The instant request for hearing was received by the Michigan Administrative Hearing System on [REDACTED]. (Appellant's Exhibit #1)

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 Health Plan of Michigan 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. 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.

Although the Contractor must provide the full range of covered services listed below they may choose to provide services over and above those specified. The covered

services provided to enrollees under this Contract include, but are not limited to, the following:

- Ambulance and other emergency medical transportation
- Blood lead testing in accordance with Medicaid Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) policy
- Certified nurse midwife services
- Certified pediatric and family nurse practitioner services
- Chiropractic services
- Diagnostic lab, x-ray and other imaging services
- Durable medical equipment (DME) and supplies
- Emergency services
- End Stage Renal Disease services
- Family planning services (e.g., examination, sterilization procedures, limited infertility screening, and diagnosis)
- Health education
- Hearing and speech services
- Hearing aids
- Home Health services
- Hospice services (if requested by the enrollee)
- Immunizations
- Inpatient and outpatient hospital services
- Intermittent or short-term restorative or rehabilitative services (in a nursing facility), up to 45 days
- Restorative or rehabilitative services (in a place of service other than a nursing facility)
- Medically necessary weight reduction services
- Mental health care – maximum of 20 outpatient visits per calendar year
- Out-of-state services authorized by the Contractor
- Outreach for included services, especially pregnancy-related and Well child care
- Parenting and birthing classes
- Pharmacy services
- Podiatry services
- Practitioners' services (such as those provided by physicians, optometrists and dentists enrolled as a Medicaid Provider Type 10)
- Prosthetics and orthotics
- Tobacco cessation treatment including pharmaceutical and behavioral support

- Therapies (speech, language, physical, occupational) excluding services provided to persons with development disabilities which are billed through Community Mental Health Services Program (CMHSP) providers or Intermediate School Districts.
- Transplant services
- Transportation for medically necessary covered services
- Treatment for sexually transmitted disease (STD)
- Vision services
- Well child/EPSTD for persons under age 21

Article 1.020 Scope of [Services],
at §1.022 E (1) contract, 2010, p. 22.

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Utilization Management

(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.

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Contract, *Supra*, at page 49.

The MHP witness testified that the Appellant failed to meet plan requirements under utilization management guidelines for approval of the requested drug; Zemaira - for lack of meeting the MHP drug approval criteria. [See Finding of Facts 5 and 6]

The MHP pharmacist testified that independent reviewed verified their position that the Appellant's blood level was not what it was supposed to be and that the appropriate genetic markers were not present.

The Appellant said that he did not recall whether he spoke to the care coordinator ██████████ – but he emphasized that his doctor wants him on this medication. The MHP witness noted for the record that the MHP was working with the Appellant to locate a new pulmonologist – and that they were successful on ██████████ – just days before this hearing.

The Petitioner has the burden of proving by a preponderance of evidence that the requested medication was medically necessary. He failed to meet his burden of proof.

The MHP established in its thorough PA review and testimony that Appellant did not meet drug approval criteria for the approval of the medication Zemaira.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED that:

The Medicaid Health Plan's decision is AFFIRMED.

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Dale Malewska
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

Date Signed: July 19, 2013

Date Mailed: July 19, 2013

Case Name: Bouck, Richard
Docket No. 2013-29464 QHP
Decision & Order

[REDACTED]

CC:

[REDACTED]

***** 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.