

**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. 2013-65320 QHP

██████████

██████████

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, and upon a Request for Hearing filed by Appellant.

After due notice, a hearing was held on ██████████. Appellant appeared and testified on her own behalf. ██████████, Appeals Coordinator, represented ██████████, the Respondent Medicaid Health Plan ("MHP"). ██████████, a Medical Director at the MHP, testified as a witness for Respondent.

ISSUE

Did the MHP properly deny Appellant's prior authorization requests for Gammagard/intravenous immunoglobulin (IVIg)?

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 is a ██████ year-old Medicaid beneficiary who is enrolled in the Respondent MHP and who has been diagnosed with myasthenia gravis. (Respondent's Exhibit A, page 61).
2. On or about ██████████ and ██████████ the MHP received prior authorization requests for Gammagard/IVIg for Appellant. (Respondent's Exhibit A, pages 61-77).
3. One request provided that the treatment was to be ongoing while the other stated that it would be for a year. (Respondent's Exhibit A, pages 61, 70).
4. On ██████████ the MHP sent Appellant written notice that the requests were being denied. (Respondent's Exhibit A, pages 78-79).

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5. Specifically, the denial stated that the requests were being denied because:

[REDACTED] has reviewed this Prior Authorization request and determined that it is not a covered benefit. Per the Michigan Department of Community Health Medicaid Provider Manual, Pharmacy Section 6: Non-Covered Services, experimental services are not a covered benefit. Please discuss your plan of care with your physician.

Respondent's Exhibit A, page 78

6. On [REDACTED] the Michigan Administrative Hearing System (MAHS) received a Request for Hearing filed by Appellant with respect to the denials of the prior authorization requests. (Petitioner's Exhibit 1, pages 1-2).

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.

In 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 (MHPs).

The Respondent is one of those MHPs. With respect to such MHPs, their contract with the Michigan Department of Community Health ("MDCH" or "Department") provides:

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,

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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 . . .

*Section 1.022(E)(1), Covered Services.
MDCH contract (Contract) with the Medicaid Health Plans,
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."

In this case, the pertinent section of the Michigan Medicaid Provider Manual (MPM) states:

SECTION 6 – GENERAL NONCOVERED SERVICES

This section specifies general coverage restrictions. However, drugs in other classes may not be covered. Pharmacies should review the MPPL for specific coverage. When possible, pharmacies are encouraged to suggest alternative covered therapy to the prescriber if a product is not covered.

The following drug categories are **not covered** as a benefit:

* * *

- Drugs prescribed for "off label" use if there is no generally accepted medical indication in peer reviewed medical literature (Index Medicus), or listing of such use in standard pharmaceutical references such as Drug Facts and Comparisons, AMA Drug Evaluations, American Hospital Formulary Service Drug Information, or DRUGDEX Information Systems.

*MPM, July 1, 2013 version
Pharmacy Chapter, page 12*

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Here, it is undisputed that the ongoing Gammagard/IVIG sought by Appellant to treat her myasthenia gravis is an “off label” use for that treatment. (Respondent’s Exhibit A, pages 5-6; Testimony of Appellant; Testimony of ██████████)

Moreover, the MHP’s evidence and ██████████ testimony demonstrate that there is no generally accepted medical indication for long-term, ongoing use of Gammagard/IVIG to treat myasthenia gravis found in the medical literature or standard pharmaceutical references. (Respondent’s Exhibit A, pages 3-60; Testimony of ██████████)

As conceded by Respondent, there is a generally accepted medical indication for short-term use of Gammagard/IVIG to treat myasthenia gravis. (Respondent’s Exhibit A, pages 3-60; Testimony of ██████████) However, short-term treatment was not requested in this case. (Respondent’s Exhibit A, pages 61-77).

In response, Appellant argues that it makes little sense that she could be approved for short-term use and not ongoing IVIG. She also testified that the treatment she seeks is the only treatment that has worked for her.

Appellant has the burden of proving by a preponderance of the evidence that the MHP erred in denying the prior authorization requests. Here, while this Administrative Law Judge appreciates Appellant’s position, the above policy is clear and Appellant has failed to demonstrate that the ongoing, long-term treatment she requested meets the criteria of the MPM. Accordingly, the MHP’s decision must be sustained.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the MHP properly denied Appellant’s requests for Gammagard/intravenous immunoglobulin (IVIG).

IT IS THEREFORE ORDERED that:

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



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

Date Signed: ██████████

Date Mailed: ██████████


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cc: 

***** 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.