

**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.** 2013-68484 PA

██████████

██████████

**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 Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. Appellant appeared and testified on his own behalf. ██████████, Appeals Review Officer, represented the Department of Community Health. ██████████, Review Coordinator at the Michigan Peer Review Organization (MPRO), testified as a witness for the Department.

**ISSUE**

Did the Department properly deny Appellant's prior authorization request for Ensure Plus?

**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 has a diagnosis of tongue cancer. Appellant underwent surgery on his tongue in the past and is tracheostomy dependent. (Respondent's Exhibit A, page 4; Testimony of Appellant).
2. The Department contracts with MPRO for MPRO to conduct telephonic and electronic authorizations of specified medical supplies and services. (Testimony of ██████).
3. On ██████████, MPRO received a telephonic prior authorization request from the office of ██████████ for ██████ cans per day of Ensure Plus for Appellant, to be taken orally. (Testimony of ██████).
4. After being instructed to provide more information, the representative from ██████████ office telephoned MPRO again on ██████████ and

- reported to a nurse reviewer that Appellant had gained ██████ pounds from ██████ to ██████ (Testimony of ██████).
5. ██████ office did not identify any previously tried economic alternatives, such as carnation instant breakfasts or high calorie shakes, to either the nurse reviewer or a subsequent physician reviewer. (Testimony of ██████).
  6. Given the lack of trials of more economic alternatives, MPRO decided to deny the prior authorization request and, on ██████ advised ██████ office of denial and the reconsideration process. (Testimony of ██████).
  7. No request for reconsideration was submitted to MPRO within three days, as required for immediate reconsideration, and MPRO therefore sent written notice of the denial to Appellant and his doctor's office. (Testimony of ██████).
  8. On ██████ the Michigan Administrative Hearing System received a request for hearing filed by Appellant. (Respondent's Exhibit A, page 3).

## **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.

Medicaid covered benefits are addressed for the practitioners and beneficiaries in the Medicaid Provider Manual (MPM).

Regarding the specific request in this case, the applicable version of the MPM states in part:

### **2.13 ENTERAL NUTRITION**

Enteral nutrition is nutrition administered by tube or orally into the gastrointestinal tract. Enteral nutrition is classified into categories that possess similar characteristics. Categories for enteral nutrition are listed by HCPCS codes on the MDCH Medical Supplier/DME/Prosthetics and Orthotics Database on the MDCH website. For the appropriate HCPCS code, products are listed on the enteral nutrition product classification list on the website for the Medicare Pricing, Data Analysis and Coding (PDAC)

contractor. If the formula is not listed in the covered HCPCS codes, the provider must contact the PDAC contractor for a coding determination. (Refer to the Directory Appendix for website and contact information.)

### **2.13.A. ENTERAL NUTRITION (ADMINISTERED ORALLY)**

#### **Standards of Coverage**

Enteral nutrition (administered orally) may be covered for beneficiaries under the age of 21 when:

- A chronic medical condition exists resulting in nutritional deficiencies and a three-month trial is required to prevent gastric tube placement.
- Supplementation to regular diet or meal replacement is required, and the beneficiary's weight-to-height ratio has fallen below the fifth percentile on standard growth grids.
- Physician documentation details low percentage increase in growth pattern or trend directly related to the nutritional intake and associated diagnosis/medical condition.

**For CSHCS coverage**, a nutritionist or appropriate pediatric subspecialist must indicate that long-term enteral supplementation is required to eliminate serious impact on growth and development.

For beneficiaries age 21 and over:

- The beneficiary must have a medical condition that requires the unique composition of the formula nutrients that the beneficiary is unable to obtain from food.
- The nutritional composition of the formula represents an integral part of treatment of the specified diagnosis/medical condition.
- The beneficiary has experienced significant weight loss.

### Documentation

Documentation must be less than 30 days old and include:

- Specific diagnosis/medical condition related to the beneficiary's inability to take or eat food.
- Duration of need.
- Amount of calories needed per day.
- Current height and weight, as well as change over time. (For beneficiaries under 21, weight-to-height ratio.)
- Specific prescription identifying levels of individual nutrient(s) that is required in increased or restricted amounts.
- List of economic alternatives that have been tried.
- Current laboratory values for albumin or total protein (for beneficiaries age 21 and over only).

For continued use beyond 3-6 months, **the CSHCS Program** requires a report from a nutritionist or appropriate pediatric subspecialist.

### PA Requirements

PA is required for all enteral formula for oral administration.

*MPM, July 1, 2013 version  
Medical Supplier Chapter, pages 32-33*

Appellant bears the burden of proving by a preponderance of the evidence that the Department erred in denying his prior authorization request. Based on the evidence in this case, Appellant has failed to meet that burden of proof.

The above policy clearly provides that the prior authorization request in this case must include a list of economic alternatives that have been tried, and that failed, prior to the request for Ensure Plus. In this case, however, ██████████ office did not identify any previously tried economic alternatives, such as carnation instant breakfasts or high calorie shakes, to the nurse reviewer or a subsequent physician reviewer. (Testimony of ██████████).

In response, Appellant testified that he has tried both carnation instant breakfasts and high calorie shakes, without success, but he submitted no other evidence in support of his testimony. Moreover, Appellant did not make the actual prior authorization request and he has no knowledge of what was reported. (Testimony of Appellant).

Accordingly, Appellant has failed to meet his burden of proving by a preponderance of the evidence that the Department/MPRO erred in denying the prior authorization request and that denial must be sustained.

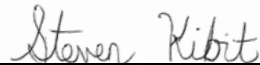
To the extent that Appellant has new or updated information he wants to provide, he is free to submit another prior authorization request for Ensure Plus at any time. The denial at issue in this case, however, must be affirmed given the information available at the time and the lack of economic alternative previously trialed.

**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly denied Appellant's prior authorization request for Ensure Plus.

**IT IS THEREFORE ORDERED THAT:**

The Department's decision is **AFFIRMED**.



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

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

SK/db

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

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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.