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. 2013-69554 PHR

[redacted] [redacted] [redacted]

Appellant
[redacted]/

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37, and upon the Appellant's request for a hearing.

After due notice, a hearing was held [redacted] Appellant appeared and testified on her own behalf. [redacted] a Clinical Pharmacist with the [redacted]"), represented the Michigan Department of Community Health ("MDCH" or "Department").

ISSUE

Did the Department properly deny Appellant's prior authorization request for the drug Adderall?

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 [redacted]-year-old Medicaid beneficiary who has been diagnosed with Attention Deficit Disorder (ADD) by her family practice doctor, [redacted] (Respondent's Exhibit A, pages 7-8).

2. On [redacted], [redacted] received a prior authorization request for the drug [redacted] for Appellant from [redacted] (Respondent's Exhibit A, page 8).

3. Appellant has never previously received Adderall through Medicaid, but she had been prescribed it in the past and paid for it herself at times. (Respondent's Exhibit A, pages 16-17; Testimony of Appellant).

4. In response to the prior authorization request, [redacted] sought additional information from Appellant and her doctor, while also offering a change to the preferred medication. (Testimony of [redacted].

5. On [redacted] submitted a letter and supplemental documentation to [redacted]. (Respondent's Exhibit A, pages 10-14).

6. [redacted] office also spoke with [redacted] staff on [redacted] regarding a failed trial of using the drug Strattera to treat Appellant's ADD. (Testimony of [redacted]).

7. [redacted] forwarded Appellant's prior authorization request to the Department for a physician review. (Testimony of [redacted]; Respondent's Exhibit A, page 18).

8. Following that review, the physician for the Department found that the request should be denied as there was no mental health professional evaluation supporting the diagnosis, as required by policy. (Respondent's Exhibit A, page 3-7).

9. On [redacted], the Department sent both Appellant and her provider written notice that the prior authorization request was being denied because it did not meet criteria. (Petitioner's Exhibit 2, pages 1; Respondent's Exhibit A, page 3).

10. On [redacted], the Michigan Administrative Hearing System (MAHS) received a request for hearing in this matter. (Petitioner's Exhibit 1, page 1; Respondent's Exhibit A, page 2).

11. The request for hearing was not entirely clear as to the action being challenged, but it appeared that Appellant was disputing the denial of medication and the matter was therefore coded as a QHP case involving Appellant's Medicaid Health Plan (MHP).

12. A hearing was also scheduled for [redacted] before the undersigned Administrative Law Judge.

13. On [redacted], the Administrative Law Judge, Appellant and a representative from Appellant's MHP, went on the record and determined that, given the specific medication at issue, this matter was not a QHP case.

14. This Administrative Law Judge then indicated that the matter needed to be recoded and rescheduled.

15. This Administrative Law Judge also asked Appellant to fax over a copy of the notice of denial she was appealing in order to clarity what type of case this was.

16. Appellant faxed over the disputed denial on [redacted] (Petitioner's Exhibit 2, page 1).

17. The matter was then recoded as a PHR case and a hearing was scheduled for [redacted]

18. The hearing in this matter was held and completed 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.

The Social Security Act § 1927(d), 42 USC 1396r-8(d), also provides as follows:

> Limitations on Coverage of Drugs –
>
> (1) Permissible Restrictions –
>
> (A) A state may subject to Prior Authorization any covered outpatient drug. Any such Prior Authorization program shall comply with the requirements of paragraph (5).
>
> (B) A state may exclude or otherwise restrict coverage of a covered outpatient drug if –
>
> (i) the prescribed use is not for a medically accepted indication (as defined in subsection (k)(6);
>
> (ii) the drug is contained in the list referred to in paragraph (2);
>
> (iii) the drug is subject to such restriction pursuant to an agreement between a manufacturer and a State authorized by

the Secretary under subsection (a)(1) or in effect pursuant to subsection (a)(4); or

(iv) the State has excluded coverage of the drug from its formulary in accordance with paragraph 4.

(2) List of drugs subject to restriction–The following drugs or classes of drugs, or their medical uses, may be excluded from coverage or otherwise restricted:

(A) Agents when used for anorexia, weight loss, or weight gain.

(B) Agents when used to promote fertility.

(C) Agents when used for cosmetic purposes or hair growth.

(D) Agents when used for the symptomatic relief of cough and colds.

(E) Agents when used to promote smoking cessation.

(F) Prescription vitamins and mineral products, except prenatal vitamins and fluoride preparations.

(G) Nonprescription drugs.

(H) Covered outpatient drugs, which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee.

(I) Barbiturates.

(J) Benzodiazepines.

(K) Agents when used for the treatment of sexual or erectile dysfunction, unless such agents are used to treat a condition, other than sexual or

erectile dysfunction, for which the agents have been approved by the Food and Drug Administration.

* * *

(4) Requirements for formularies — A State may establish a formulary if the formulary meets the following requirements:

(A) The formulary is developed by a committee consisting of physicians, pharmacists, and other appropriate individuals appointed by the Governor of the State (or, at the option of the State, the State's drug use review board established under subsection (g)(3)).

(B) Except as provided in subparagraph (C), the formulary includes the covered outpatient drugs of any manufacturer, which has entered into and complies with an agreement under subsection (a) (other than any drug excluded from coverage or otherwise restricted under paragraph (2)).

(C) A covered outpatient drug may be excluded with respect to the treatment of a specific disease or condition for an identified population (if any) only if, based on the drug's labeling (or, in the case of a drug the prescribed use of which is not approved under the Federal Food, Drug, and Cosmetic Act but is a medically accepted indication, based on information from appropriate compendia described in subsection (k)(6)), the excluded drug does not have a significant, clinically meaningful therapeutic advantage in terms of safety, effectiveness, or clinical outcome of such treatment for such population over other drugs included in the formulary and there is a written explanation (available to the public) of the basis for the exclusion.

(D) The state plan permits coverage of a drug excluded from the formulary (other than any

> drug excluded from coverage or otherwise restricted under paragraph (2)) pursuant to a Prior Authorization program that is consistent with paragraph (5),
>
> (E) The formulary meets such other requirements as the Secretary may impose in order to achieve program savings consistent with protecting the health of program beneficiaries.
>
> A Prior Authorization program established by a State under paragraph (5) is not a formulary subject to the requirements of this paragraph.
>
> (5) Requirements of Prior Authorization programs—A State plan under this title may require, as a condition of coverage or payment for a covered outpatient drug for which Federal financial participation is available in accordance with this section, with respect to drugs dispensed on or after July 1, 1991, the approval of the drug before its dispensing for any medically accepted indication (as defined in subsection (k)(6)) only if the system providing for such approval –
>
> (A) Provides response by telephone or other telecommunication device within 24 hours of a request for prior authorization; and
>
> (B) Except with respect to the drugs referred to in paragraph (2) provides for the dispensing of at least 72-hour supply of a covered outpatient prescription drug in an emergency situation (as defined by the Secretary).

The Department is therefore authorized by federal law to develop a formulary of approved prescriptions and a Prior Authorization process. In this case, the Michigan Medicaid program guidelines list criteria for Adderall that provide that the drug may only been approved in new onset adult cases of ADD where the diagnosis of ADD was:

> made by a psychiatrist, clinical (neuro)psychologist (examples of acceptable credentials include but are not limited to LLP, LP, PsyD, PhD), clinical social worker (examples of acceptable credentials include but are not limited to LMSW, LCSW) or licensed/certified counselor (examples of acceptable credentials include but are not

> limited to LPC, LPCC, CAAC, CADC, CAADC) after turning 18 years old.
>
> *Respondent's Exhibit A, page 23*

Here, the Department witness testified that the requested drug was prescribed to help treat ADD, but that there is no record of Appellant being diagnosed with that condition by the type of medical professional identified in the applicable criteria. The Department's witness also testified that, owing to [redacted] contractual requirements, the request was forwarded to a Department physician reviewer, who also conducted a review and concluded that the request should be denied for the reason given above.

In response, Appellant testified that she now understood what is required of her and that she has now been referred to a psychiatrist. Appellant also indicated that she plans on having that psychiatrist diagnose her and submitting a new prior authorization request for Adderall.

The Department's evidence clearly showed that the Appellant had not satisfied the Medicaid criteria for the approval of Adderall given the lack of any diagnosis or evaluation from one of the medical professionals described in the applicable policy. The Department's decision to deny Appellant's request is therefore affirmed.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED that:

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

Steven Kibit

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

Date Signed: [redacted]

Date Mailed: [redacted]

[redacted]
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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 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.