

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P.O. Box 30763, Lansing, MI 48909
(517) 335-2484; Fax: (517) 373-4147

IN THE MATTER OF:

██████████

Appellant

_____ /

Docket No. 14-009715 PAC

██████████

██████████

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 a hearing filed on behalf of the Appellant.

After due notice, a hearing was held on ██████████ Appellant's mother, appeared and testified on Appellant's behalf. ██████████, Appeals Review Officer, represented the Department of Community Health. ██████████, RN, ██████████ Project Manager at ██████████ testified as a witness for the Department.

ISSUE

Did the Department properly deny Appellant's 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 (DOB ██████████) Medicaid beneficiary. (Exhibit A, p. 11 and testimony).
2. On ██████████, Michigan Medicaid/Children's Special Health Care (CSHCS) (Department) received a prior authorization request submitted on Appellant's behalf by ██████████ requesting Ensure Plus. A nurse reviewer could not approve the request so it was referred to the physician reviewer. The physician reviewer spoke to ██████████ and determined the Ensure was not medically necessary as it was being requested to accommodate a food preference. (Exhibit A, p. 11 and testimony).

3. On ██████████, the Department sent Appellant's parent and doctor written notice that the prior authorization request for Ensure Plus was denied based on Sections 1.10 and 2.13.A of the Medical Supplier chapter of the Medicaid Provider Manual. (Exhibit A, pp. 3-4, 11 and testimony).
4. On ██████████, the Michigan Administrative Hearing System (MAHS) received the Appellant's request for hearing. (Exhibit A, pp. 10-29).

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) and, as discussed above, was denied based on Sections 1.10 and 2.13.A of the Medical Supplier chapter of the Medicaid Provider Manual. Section 1.10 provides in part:

1.10 NONCOVERED ITEMS

Items that are not covered by Medicaid include, but are not limited to:

- Adaptive equipment (e.g., rocker knife, swivel spoon, etc.)
- Air conditioner
- Air purifier
- Custom seating for secondary and/or transport chairs
- Devices used for play, pre-mobility development, or exercise are not considered pediatric mobility devices for the purpose of reimbursement and are not covered (e.g., jet mobile, ready racer, creepster crawler)
- Enteral formula to accommodate psychological or behavioral conditions, food preferences, allergies, loss of appetite, or noncompliance with a specialized diet
- Environmental Control Units

Equipment not used or not used properly by the beneficiary [MPM, *Medical Supplier Chapter*, 1.10 Noncovered Items, p. 17, July 1, 2014, emphasis added].

Section 2.13.A provides in part:

2.13.A. ENTERAL NUTRITION (ADMINISTERED ORALLY)

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, *Medical Supplier Chapter, Section 2.13.A. Enteral Nutrition (Administered Orally)* pp. 32-33, July 1, 2014, emphasis added].

Specifically, the Department's witness ██████████, RN, ██████████ Project Manager at ██████████, established that the requested Ensure Plus, a nutritional supplement, was request by ██████████ office on ██████████. In connection with the request, ██████████ determined that the doctor was requesting ██████████ cans per day of Ensure Plus for ██████████ calories out of the ██████████ calories needed by the Appellant per day. ██████████ determined that the Appellant was on a regular diet, but they were requesting the Ensure due to trouble swallowing. However, ██████████ determined the Appellant had a normal swallow study. ██████████ determined that the Appellant weighed ██████████ pounds, was ██████████ inches tall and had a BMI of ██████████ which was in the ideal range. Also on ██████████, it was determined that the Appellant's protein was not low, i.e., it was above the normal range (3.4-5.4) at 7.6.

██████████ stated that under Section 1.10 and Section 2.13.A the Ensure Plus could not be approved by a nurse reviewer so the matter was referred to a physician reviewer. The ██████████ doctor spoke with ██████████ and determined that the Ensure was not medically necessary. The ██████████ doctor found that the Appellant was autistic and the Ensure was a food preference as the Appellant liked ensure, but not blenderized food. Accordingly, the Ensure Plus was denied under the relevant sections of the Medicaid Provider Manual, Section 1.10 for Noncovered Items, and Section 2.13.A: Enteral Nutrition. The doctor's office was notified of the denial and advised they had three days to request a reconsideration, but no reconsideration was requested by the Appellant's doctor.

Appellant and his representative bear the burden of proving by a preponderance of the evidence that the Department erred in denying the prior authorization request.

Here, the Appellant's mother testified the Appellant has had some health changes since they put in the PA request for the Ensure. Appellant's mother said she thinks the doctor should have put in for the three day appeal. Appellant's mother also itemized the Appellant's current health issues. She said she disagrees with the denial of the Ensure. She said the Appellant currently weighs ██████████ pounds. She does not think that ██████████ is interested in giving the Appellant quality care and she is in the process of changing doctors within the office. Appellant's mother said the Appellant's current poor health is due to not getting the requested Ensure. She indicated the need for the Ensure is not based on a behavioral or psychological reason. She further stated the Ensure was always paid for in the past, and she believes the Ensure is medically necessary.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly denied Appellant's request for Ensure Plus based upon the information related to [REDACTED] at the time the PA request was made by [REDACTED] office and the relevant sections of the Medicaid Provider manual quoted above.

IT IS THEREFORE ORDERED THAT:

The Department's decision **AFFIRMED**.

William D Bond

William D. Bond
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Community Health

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

SJK/db

cc: [REDACTED]

***** NOTICE *****

The Michigan Administrative Hearing System for the Department of Community Health 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 for the Department of Community Health 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.