

**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. 2014-007021 PA

Case No. ██████████

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ) 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 ██████████. Appellant personally testified by conference telephone.

██████████, Appeals Review Officer, represented the Department of Community Health (Department). Dr. ██████████, MD, consulting physician with the Office of Medical Affairs for the DCH appeared as a witness.

ISSUE

Did the Department properly deny Appellant's prior authorization (PA) request for an Integrated BRAC analysis aka BART genetic test?

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 female beneficiary of the federal Medicaid program administered by the Michigan DCH.
2. On or about ██████████ Appellant's physician filed a letter with the Michigan Medicaid program requesting coverage for "a BRCA1/BRCA2 DNA sequence analysis test." Exhibit A.11) The narrative letter contained an attached request for 2 separate CPT codes of 81211 and 81213. (Exhibit A.12) One test is for BRAC 1 & 2; the other code is for a BART. (Exhibit A.12)
3. Attached to the ██████████ letter was a form from the lab-██████████, Test Request Form signed by Appellant's physician's office. The form had a box checked off under the test requested section of the form that stated: "integrated BRAC Analysis-BRCA1 and BRCA2 gene sequence and large rearrangement analysis..." (Exhibit A.9) The expert

witness at the hearing testified that the 81211 is the BRCA1 and 2 tests; the 81213 code is for a separate genetic test, called an integrated BRAC analysis or BART.

4. The Test Request Form does not separate out the 3 tests but combines them into one option to be checked off.
5. The DCH witness testified that Appellant's physician and/or ██████████ are fully knowledgeable of the fact that the tests are separate tests, and not one, and, that the Medicaid program does not routinely approve the integrated BRAC Analysis as it is considered experimental.
6. On ██████████ the DCH completed its processing and documented its decision for prior authorization number 1000357741 issuing an Approval Notice approving 81211 (BRCA tests 1 & 2 only) and denying 81213 (BART) because it is considered experimental and investigational. (Exhibit A.5)
7. On ██████████ the MDCH issued a Notification of Denial letter to ██████████ indicating that the BART test "...has been denied by Medicaid because it is considered experimental and investigational...see policy Section 8.3 of the Medicaid Provider Manual..." (Exhibit A.7)
8. Testimony at the hearing indicated that the tests were completed on ██████████, before MDCH processed the request. ██████████ ██████████ ██████████ conducted all 3 tests, for both codes.
9. On ██████████, the Michigan Administrative Hearing System (MAHS) received Appellant's Request for Hearing stating in part: "...I was originally approved for the genetic procedure, I had the procedure, then I was sent a letter of denial, prior authorization # ██████████." (Exhibit A.4) Appellant testified that before she had the test done she was informed verbally by the requesting party that the request was approved.
10. At the administrative hearing, Appellant testified that she received a bill from ██████████ for the non-covered test, over \$██████████. Appellant requests that the MDCH pay the outstanding bill to ██████████.

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.

First, it should be noted that there is no dispute herein regarding the approval or payment of the BRCA 1 and 2 tests. The issue herein is with the denial of the BART test.

Federal and state law requires prior authorization for certain Medicaid services; the MPM further does not allow for services that are considered experimental/investigational:

1.10 PRIOR AUTHORIZATION

Medicaid requires prior authorization (PA) to cover certain services before those services are rendered to the beneficiary. The purpose of PA is to review the medical need for certain services. . . .

Medicaid Provider Manual, (MPM)
Practitioner, April 1, 2013,¹ page 4.
MPM, Dental, §6.6A, April 1, 2013, pp. 17, 18

8.3 Noncovered Services

The items or services listed below are not covered by the Medicaid program:

...Experimental/investigational drugs, biological agents, procedures, devices or equipment...

Medicaid Provider Manual (MPM)
January 1, 2014, page 18
MPM, Delivery of Services,
Section 8.3

In this case, The Department was required to deny the BART sequence test under the MPM Section 8.3. Evidence of record fully supports the action taken by the DCH. The evidence supports finding that the DCH properly complied with the law, and its regulations, policy and procedures herein.

It is noted that Appellant indicates on her hearing request that she was approved per prior authorization # ██████████. However, a review of that prior authorization clearly states that while the BRCA 1 & 2 were approved, the BART was clearly denied. For these reasons, this ALJ must uphold the denial as it was correct under federal and state law.

¹ This edition of the MPM is identical to the version in place at the time of negative action.

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It is noted however, that it is disturbing that ██████████ did this test prior to the MDCH approval/denial, and, when ██████████ was purportedly fully aware that Medicaid does not routinely pay for the BART sequence test. (Testimony by Dr. ██████, DCH witness) Moreover, the language of ██████'s Test Request Form is structured in such a way that it is impossible to separate out the 2 tests (as they have 2 different codes). Dr. ██████ indicated at hearing that she would ask for an internal review of ██████, as well as a review of any relevant consent forms that would be required of ██████ to issue to an invoice to a Medicaid beneficiary despite the non-approval by the Medicaid program in such instances. However, this ALJ does not have any jurisdiction to review such, or any related issues as to the unethical or illegal actions.

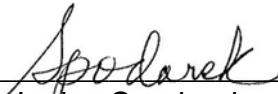
As the facts stand, and as far as this ALJ has jurisdiction, this action must be upheld.

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 PA request for a BART 81213 genetic request, and

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

/s/ 
Janice Spodarek
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Community Health

JS ██████

cc: ██████████
██████████

Date Signed: ████████████████████

Date Mailed: ████████████████████

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***** 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.