

**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. 2014-20759 QHP

Case No. ██████████

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, upon Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. ██████████, mother, represented Appellant. Appellant's witnesses were Dr. ██████████, M.D., Pediatric Oncology Fellow, ██████████ Children's Hospital; Dr. ██████████, Staff Oncologist, ██████████ Children's Hospital; and ██████████, Social Worker.

██████████ of Michigan, was represented by ██████████, Staff Attorney. ██████████ of Michigan is a Department of Community Health contracted Medicaid Health Plan (MHP). Dr. ██████████, Medical Director, appeared as a witness for the MHP.

ISSUE

Did the MHP properly deny the Appellant's request for a referral to see an out of state physician for cancer treatment at ██████████ Children's Hospital?

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, born ██████████, who is enrolled in Respondent's MHP. (Exhibit 1; Testimony)
2. On or about ██████████, the MHP received a request for a referral for Appellant to see an out of state physician at ██████████ Children's Hospital for a diagnosis of relapsed, metastatic undifferentiated nasopharyngeal carcinoma. Appellant was originally diagnosed with Stage III nasopharyngeal carcinoma in ██████████. Appellant received chemotherapy and radiation at ██████████ hospital, which was completed in ██████████. Appellant was then found to have a relapse of the disease in ██████████. (Exhibit A; p 120; Testimony)

3. On ██████████, the MHP issued a letter to Appellant indicating that the referral request to see an out of state physician at ██████████ Children's Hospital was denied because the requested treatment is considered investigational or experimental and such treatments are not covered. Furthermore, the treatment was denied because the MHP's Medical Policy for non-emergent out of state services, coverage for elective services at out of state facilities and non-contracted facilities is only considered a benefit if the requested services are not available within the state of Michigan. The MHP requires documentation from two (2) state facilities stating they are unable to provide services for the condition prior to consideration for coverage. (Exhibit A, pp 118-128; Testimony)
4. Appellant requested a Level I review of the MHP's determination and submitted additional documentation to be considered during the Level I review. (Exhibit A, pp 129-188; Testimony)
5. A Level 1 external review was completed by Medical Review Institute of America, Inc. (MRIOA), who concurred in the denial. (Exhibit A, pp 189-195; Testimony)
6. On ██████████, the MHP notified Appellant of the results of the Level 1 review. (Exhibit A, pp 196-202)
7. On ██████████, Appellant requested a Level 2 appeal of the denial. (Exhibit A, p 204; Testimony)
8. On ██████████, the MHP notified Appellant that the Level 2 review also upheld the denial. (Exhibit A, pp 203-207)
9. On ██████████, the Michigan Administrative Hearing System received the Request for Hearing submitted on Appellant's behalf. (Exhibit 1)

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 Respondent is one of those MHPs.

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, 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. The covered services provided to enrollees under this Contract include, but are not limited to, the following:

- Ambulance and other emergency medical transportation
- Blood lead testing in accordance with Medicaid Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) policy
- Certified nurse midwife services
- Certified pediatric and family nurse practitioner services
- Chiropractic services
- Diagnostic lab, x-ray and other imaging services
- Durable medical equipment (DME) and supplies
- Emergency services
- End Stage Renal Disease services
- Family planning services (e.g., examination, sterilization procedures, limited infertility screening, and diagnosis)
- Health education
- Hearing and speech services
- Hearing aids
- Home Health services
- Hospice services (if requested by the enrollee)
- Immunizations
- Inpatient and outpatient hospital services
- Intermittent or short-term restorative or rehabilitative services (in a nursing facility), up to 45 days
- Restorative or rehabilitative services (in a place of service other than a nursing facility)
- Medically necessary weight reduction services
- Mental health care – maximum of 20 outpatient visits per calendar year
- Out-of-state services authorized by the Contractor

- Outreach for included services, especially pregnancy-related and Well child care
- Parenting and birthing classes
- Pharmacy services
- Podiatry services
- Practitioners' services (such as those provided by physicians, optometrists and dentists enrolled as a Medicaid Provider Type 10)
- Prosthetics and orthotics
- Tobacco cessation treatment including pharmaceutical and behavioral support
- Therapies (speech, language, physical, occupational) excluding services provided to persons with development disabilities which are billed through Community Mental Health Services Program (CMHSP) providers or Intermediate School Districts.
- Transplant services
- Transportation for medically necessary covered services
- Treatment for sexually transmitted disease (STD)
- Vision services
- Well child/EPSTD for persons under age 21

Article 1.020 Scope of [Services],
at §1.022 E (1) contract, 2010, p. 22.

- (1) The major components of the Contractor's utilization management (UM) program must encompass, at a minimum, the following:
 - Written policies with review decision criteria and procedures that conform to managed health care industry standards and processes.
 - A formal utilization review committee directed by the Contractor's medical director to oversee the utilization review process.
 - Sufficient resources to regularly review the effectiveness of the utilization review process and to make changes to the process as needed.
 - An annual review and reporting of utilization review activities and outcomes/interventions from the review.
 - The UM activities of the Contractor must be integrated with the Contractor's QAPI program.
- (2) Prior Approval Policy and Procedure

The Contractor must establish and use a written prior approval policy and procedure for UM purposes. The Contractor may not use such policies and procedures to avoid providing medically necessary services within the coverages established under the Contract. The policy must ensure that the review criteria for authorization decisions are applied consistently and require that the reviewer consult with the requesting provider when appropriate. The policy must also require that UM decisions be made by a health care professional who has appropriate clinical expertise regarding the service under review.

....

Contract, *Supra*, p. 49

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.” The pertinent sections of the Michigan Medicaid Provider Manual (MPM) state:

1.3 SERVICES THAT MHPS ARE PROHIBITED FROM COVERING

- Elective therapeutic abortions and related services. Abortions and related services are covered when medically necessary to save the life of the mother or if the pregnancy is a result of rape or incest;
- Experimental/Investigational drugs, procedures or equipment;
- Elective cosmetic surgery; and
- Services for treatment of infertility.

MDCH Medicaid Provider Manual,
Medicaid Health Plan Section,
October 1, 2013, p 3

7.3 OUT OF STATE/BEYOND BORDERLAND PROVIDERS [CHANGES MADE 7/1/12 & 10/1/12]

Reimbursement for services rendered to beneficiaries is normally limited to Medicaid-enrolled providers. MDCH reimburses out of state providers who are beyond the borderland area (defined below) if the service meets one of the following criteria:

- Emergency services as defined by the federal Emergency Medical Treatment and Active Labor Act

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(EMTALA) and the Balanced Budget Act of 1997 and its regulations; or

- Medicare and/or private insurance has paid a portion of the service and the provider is billing MDCH for the coinsurance and/or deductible amounts; or
- The service is prior authorized by MDCH. MDCH will only prior authorize non-emergency services to out of state/beyond borderland providers if the service is not available within the state of Michigan and borderland areas.

Managed Care Plans follow their own Prior Authorization criteria for out of network/out of state services.

MDCH Medicaid Provider Manual,
General Information for Providers Section,
October 1, 2013, p 13

The MHP also relied on its Certificate of Coverage, Section 11.06, which provides that experimental treatment if not a covered benefit. (Exhibit A, p 213)

On or about ██████████, the MHP received a request for a referral for Appellant to see an out of state physician at Texas Children's Hospital for a diagnosis of relapsed, metastatic undifferentiated nasopharyngeal carcinoma. Appellant was originally diagnosed with Stage III nasopharyngeal carcinoma in ██████████. Appellant received chemotherapy and radiation at ██████████ hospital, which was completed in ██████████. Appellant was then found to have a relapse of the disease in ██████████.

On ██████████, the MHP issued a letter to the Appellant indicating the referral request to see an out of state physician at ██████████ Children's Hospital was denied because the requested treatment is considered investigational or experimental and such treatments are not covered. Furthermore, the treatment was denied because the MHP's Medical Policy for non-emergent out of state services, coverage for elective services at out of state facilities and non-contracted facilities is only considered a benefit if the requested services are not available within the state of Michigan. The MHP requires documentation from two (2) state facilities stating they are unable to provide services for the condition prior to consideration for coverage.

Following both Level 1 and Level 2 reviews, the MHP's decision to deny the treatment was upheld.

Dr. ██████████ reviewed Appellant's medical condition and testified that there are not many treatment options for a relapse of Appellant's condition. Dr. ██████████ testified

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that they considered the treatment in ██████████ because they have published results showing that this therapy can offer better results than what can be offered in Michigan.

Dr. ██████████ testified that 95% of the treatment he does in the oncology area could be considered experimental. Dr. ██████████ indicated that the treatment in question has a reasonable track record of doubling the survival chance for persons with Appellant's condition. Dr. ██████████ admitted that the treatment is still in Level II trials, but indicated that they are really just working out the technicalities at this time. Dr. ██████████ indicated that the treatment in question combines immunization therapy with chemotherapy and this type of treatment has been shown to be successful with other types of cancer where there is a small residual amount of the disease left to eradicate, as is the case with Appellant's condition. Dr. ██████████ testified that it is not common for his office to refer patients out of state for treatment and that he only does so if the treatment in question has a good enough track record.

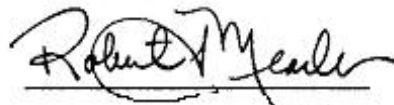
The documentation submitted for the ██████████ referral request was insufficient to establish the medical necessity for Appellant to see an out of state physician at ██████████ Children's Hospital. Per the National Comprehensive Cancer Network (NCCN) there are no treatments listed as standards of care for Appellant's diagnosis. Michigan Medicaid does not cover investigational or experimental therapies and the notes sent from ██████████ College of Medicine explain that this treatment is investigational and is not approved by the Food and Drug Administration. Appellant's doctors do not dispute this fact. Additionally, there is not documentation from two tertiary care centers noting that they are unable to treat the Appellant's condition, and that they are recommending that the member go to an out of state provider for necessary medical care. Accordingly, the MHP's determination must be upheld based on the available information.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the MHP properly denied the Appellant's request for a referral to see an out of state physician at ██████████ Children's Hospital.

IT IS THEREFORE ORDERED that:

The Medicaid Health Plan's decision is AFFIRMED.



Robert J. Meade
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

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Date Signed: 2/7/2014

Date Mailed: 2/7/2014

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 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.