

**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. 2014-34261 QHP

██████████

██████████

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 the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. Appellant appeared and testified on her own behalf. ██████████ Appeals Coordinator, represented ██████████ ██████████, the Respondent Medicaid Health Plan ("MHP"). ██████████, a Medical Director at the MHP, testified as a witness for Respondent.

ISSUE

Did the MHP properly deny Appellant's requests for Magnetic Resonance Imaging (MRI) of her lumbar spine and knee; a lower extremity orthotic; and the drug Relpax (Eletriptan)?

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 enrolled in the Respondent MHP. (Respondent's Exhibit A, page 3).
2. On ██████████, the MHP received a prior authorization request submitted on behalf of Appellant from her medical provider and requesting MRIs of Appellant's lumbar spine and knee. (Respondent's Exhibit A, pages 5-8).
3. On ██████████, the MHP sent Appellant written notice that the request for MRIs was denied. (Respondent's Exhibit A, pages 15-19).
4. On ██████████, the MHP received a prior authorization request submitted on behalf of Appellant from her medical provider and requesting a lower extremity orthotic. (Respondent's Exhibit A, pages 9-11).

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5. On [REDACTED], the MHP sent Appellant written notice that the request for a lower extremity orthotic was denied. (Respondent's Exhibit A, pages 13-14).
6. On [REDACTED], the MHP received a prior authorization request submitted on behalf of Appellant from her medical provider and requesting the drug Relpax (Eletriptan). (Respondent's Exhibit A, pages 3-4).
7. In that request, Appellant's doctor indicated that Appellant has been diagnosed with migraine with aura with intractable migraine. (Respondent's Exhibit A, page 3).
8. Appellant's doctor also indicated that Appellant had previously tried the medications Zomig, Imitrex, Maxalt, and Motrin without success. (Respondent's Exhibit A, pages 3-4).
9. On [REDACTED], the MHP sent Appellant written notice that the request for Relpax was being denied. (Respondent's Exhibit A, page 12).
10. Regarding the reason for the denial, the notice stated:

Molina Healthcare has reviewed this Prior Authorization request and determined that it does not meet [REDACTED] (list of covered medications) coverage criteria. Relpax is not a covered medication on the [REDACTED]. Please discuss with your physician an alternative medication (Imitrex, up to #9/30 or Amerge, up to #9/30) listed on the [REDACTED]. Please discuss your plan of care with your physician.

Respondent's Exhibit A, page 12

11. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received the Request for Hearing filed by Appellant in this matter regarding all three denials described above. (Petitioner's Exhibit 1, pages 1-5).

CONCLUSIONS OF LAW

MRIs and Lower Extremity Orthotic

At the onset of the hearing, the MHP's representative moved to dismiss Appellant's appeals regarding the denials of the prior authorization requests for MRIs and a lower

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extremity orthotic. According to the MHP's representative, any such appeals are untimely.

The Social Security Act and the federal regulations which implement the Social Security Act require an opportunity for fair hearing to any recipient who believes the Department may have taken an action erroneously. See 42 CFR 431.200 *et seq.* However, the opportunity for fair hearing is limited by a requirement that the request be made within 90 days of the MHP's negative action:

Request for hearing.

* * *

(d) The agency must allow the applicant or recipient a reasonable time, not to exceed 90 days from the date that notice of action is mailed, to request a hearing.

42 CFR 431.221(d)

Therefore, this Administrative Law Judge only has jurisdiction to hear cases brought timely.

Here, it is undisputed that the MHP denied the requests for MRIs and a lower extremity orthotic on ██████████ and ██████████ respectively, and that the request for hearing filed in this case was not received by MAHS until ██████████. Therefore, with respect to those ██████ issues, Appellant's request for hearing clearly exceeded the █████ day time period to request a fair hearing and this Administrative Law Judge therefore lacks jurisdiction.

Relpax

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.

In 1997, the Department received approval from the Health Care Financing Administration, U.S. Department of Health and Human Services, allowing Michigan to restrict Medicaid beneficiaries' choice to obtain medical services only from specified Medicaid Health Plans.

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The Respondent is one of those MHPs and, as provided in the Medicaid Provider Manual (MPM), is responsible for providing covered services pursuant to its contract with the Department:

The Michigan Department of Community Health (MDCH) contracts with Medicaid Health Plans (MHPs), selected through a competitive bid process, to provide services to Medicaid beneficiaries. The selection process is described in a Request for Proposal (RFP) released by the Office of Purchasing, Michigan Department of Technology, Management & Budget. The MHP contract, referred to in this chapter as the Contract, specifies the beneficiaries to be served, scope of the benefits, and contract provisions with which the MHP must comply. Nothing in this chapter should be construed as requiring MHPs to cover services that are not included in the Contract. A copy of the MHP contract is available on the MDCH website. (Refer to the Directory Appendix for website information.)

MHPs must operate consistently with all applicable published Medicaid coverage and limitation policies. (Refer to the General Information for Providers and the Beneficiary Eligibility chapters of this manual for additional information.) Although MHPs must provide the full range of covered services listed below, MHPs may also choose to provide services over and above those specified. MHPs are allowed to develop prior authorization requirements and utilization management and review criteria that differ from Medicaid requirements. The following subsections describe covered services, excluded services, and prohibited services as set forth in the Contract.

*MPM, January 1, 2014 version
Medicaid Health Plan Chapter, page 1
(Emphasis added by ALJ)*

Here, the MHP has developed specific requirements and criteria for the approval of drugs, its [REDACTED]. The MHP's Medical Director also testified that, under that formulary, Relpax is a non-preferred medication and the MHP requires documented trial/failure of all of the preferred products before a non-preferred medication can be considered. For the requested medication of Relpax, the preferred medications include sumatriptan (Imitrex) and naratriptan (Amerge). The MHP's Medical Director also testified that, while Appellant's doctor indicated that Imitrex has been tried and failed, the MHP has no records of that preferred medication or any other preferred medication ever being requested or approved. Accordingly, the MHP denied the request for Relpax.

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Appellant bears the burden of proving by a preponderance of the evidence that the MHP erred in deciding to deny her request.

In this case, given the undisputed evidence, Appellant has failed to meet that burden. Appellant testified that she has tried samples of Relpax and that they are working for her. However, Appellant also expressly acknowledged that she has never tried any of the preferred medications and that the information submitted by her doctor is incorrect.

Appellant did indicate a willingness to try the preferred medications and, if those medications subsequently fail, she can again request Relpax. However, at this time, the MHP's determination must be upheld pursuant to the above policy and drug formulary.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that he lacks jurisdiction over Appellant's appeal of the denials of her requests for MRIs and a lower extremity orthotic, and that those claims must be dismissed.

The Administrative Law Judge, based on the above findings of fact and conclusions of law, also decides that the MHP properly denied Appellant's request for the drug Relpax.

IT IS THEREFORE ORDERED that:

The Medicaid Health Plan's decision is **AFFIRMED**.



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 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.