STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
P.O. Box 30763, Lansing, MI 48909
(517) 335-3997; Fax: (517) 373-4147

IN THE MATTER OF:

Docket No. 15-003571 MHP

[redacted],

Appellant

[redacted]/

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 Appellant's request for hearing.

After due notice, an in-person hearing was held on [redacted]. Appellant appeared and testified on his own behalf. [redacted], Inquiry Dispute Coordinator, appeared and testified on behalf of [redacted], the Respondent Medicaid Health Plan (MHP). [redacted], Medical Director, also testified as a witness for the MHP.

ISSUE

Did the MHP improperly deny Appellant's prior authorization request for the medication Cialis or transportation to medical appointments?[1]

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 was previously enrolled in the Respondent MHP. (Testimony of Appellant).

2. On or about [redacted], the MHP received a prior authorization request submitted on behalf of Appellant by a [redacted] and requesting the medication Cialis for Appellant. (Exhibit A, page 14).

[1] Appellant's request for hearing also identified an issue relating to a decision to keep him disenrolled from the MHP for cause. However, as indicated in an order issued [redacted], that issue is being docketed as a separate matter with the Michigan Department of Health and Human Services as the Respondent.

3. In that form, Appellant's doctor identified Appellant diagnoses as 600.84 (impotence of organic origin) and 600.00 (benign prostatic hypertrophy or benign prostatic hyperplasia (BPH)). (Exhibit A, page 14).

4. An attached Office Visit Report also noted that Appellant was there for BPH without obstruction and trouble with erections. (Exhibit A, page 15).

5. The Office Visit Report further noted that the doctor will start him on Cialis 5mg daily for the BPH without obstruction. (Exhibit A, page 18).

6. On [redacted] the MHP sent Appellant's doctor a Notice of Formulary Alternative, in which it stated that Cialis is non-formulary and the MHP requires a trial and failure of formulary medications before non-formulary medications are considered. (Exhibit A, page 26).

7. The notice also identified four formulary alternatives. (Exhibit A, page 26).

8. On [redacted], the MHP sent Appellant's doctor a Second Notice of Formulary Alternative, in which it restated the information of the first notice and added that the prior authorization request may be denied unless it receives further information. (Exhibit A, page 27).

9. The second notice also asked Appellant's doctor to advise the MHP of the status of the request. (Exhibit A, page 27).

10. No written notice of denial was ever sent to Appellant. (Testimony of Appellant; Testimony of [redacted]

11. According to [redacted], no written notice of denial was sent because Appellant subsequently filled a prescription for the medication Flomax, which is a formulary alternative. (Exhibit A, page 28; Testimony of [redacted]

12. According to Appellant however, he had always been on Flomax for another medical condition and it did not involve his BPH without obstruction. (Testimony of Appellant).

13. On [redacted], Appellant filed a complaint with the MHP regarding his medical transportation services. (Exhibit A, page 5).

14. On [redacted], the MHP sent Appellant a written response to his complaint regarding transportation services. (Exhibit A, pages 5-6).

15. In that response, the MHP stated that it had contacted its transportation vendor. The MHP also described the information it received. (Exhibit A, pages 5-6).

16. On [redacted], the Michigan Administrative Hearing System (MAHS) received the request for hearing filed in this matter. (Petitioner's Exhibit 1, pages 1-11).

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.

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.

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.

1.1 SERVICES COVERED BY MEDICAID HEALTH PLANS (MHPS)

The following services must be covered by MHPs:

- Ambulance and other emergency medical transportation
- Blood lead services for individuals under age 21
- Certified nurse-midwife services
- Certified pediatric and family nurse practitioner services
- Childbirth and parenting classes
- Chiropractic services
- Diagnostic lab, x-ray and other imaging services
- Durable medical equipment and medical supplies
- Emergency services
- End Stage Renal Disease (ESRD) services
- Family planning services
- Health education
- Hearing and speech services
- Hearing aids
- Home health services
- Hospice services (if requested by enrollee)
- Immunizations
- Inpatient and outpatient hospital services
- Intermittent or short-term restorative or rehabilitative nursing care (in or out of a facility) for up to 45 days
- *Medically necessary transportation for enrollees without other transportation options*
- Medically necessary weight reduction services
- Mental health care (up to 20 outpatient visits per calendar year)
- Out-of-state services authorized by the MHP
- Outreach for included services, especially pregnancy-related and well-child care
- Pharmacy services
- Podiatry services
- Practitioner services (such as those provided by physicians, optometrists, or oral-maxillofacial surgeons)
- Prosthetics and orthotics

- Therapies (speech, language, physical, occupational)
- Tobacco cessation treatments, including pharmaceutical and behavior support
- Transplant services
- *Transportation for medically necessary covered services*
- Treatment for sexually transmitted disease (STD)
- Vision services
- Well child/EPSDT for individuals under age 21

MPM, January 1, 2015 version
Medicaid Health Plan Chapter, pages 1-2
(Emphasis added by ALJ)

Here, as discussed above, Appellant filed a request for hearing with respect to difficulties he was having with his medical transportation and a denial of a prior authorization request for the medication Cialis.

However, the undersigned Administrative Law Judge lacks jurisdiction over Appellant's claims regarding difficulties with transportation. The Code of Federal Regulations (CFR) only affords a Medicaid beneficiary a right to a fair hearing when the MHP takes an action that is a denial, reduction, suspension, or termination of a requested or previously authorized Medicaid covered service. *See* 42 CFR 438.400 *et seq.* Here, it is undisputed that the medical transportation has been approved and there has been no negative action that would confer jurisdiction. To the extent Appellant has issues with how the services are being provided or feels his rights have been violated by the MHP's response to his transportation issues, he can always file a complaint with the appropriate Recipient Rights office.

Moreover, regarding medications, the MHP is allowed, pursuant to its contract with the Department and the above policy, to have a drug management program that includes a drug formulary. [redacted] also testified that the MHP received a prior authorization request submitted on behalf of Appellant by his doctor for Cialis, but that Cialis is a non-formulary medication and that the MHP subsequently informed Appellant's doctor that the MHP requires a trial and failure of formulary medications before non-formulary medications are considered. [redacted] further testified that no new prior authorization request was received and that the MHP never sent Appellant a written notice of denial because Appellant filled a prescription for a formulary medication.

In response, Appellant testified that, while he has filled prescriptions for Flomax, that medication is for another medical condition and does not involve his BPH without obstruction. Appellant also testified that his doctor expressly prescribed Cialis for Appellant and that someone at the MHP verbally informed him that it was approved, only for someone else at the MHP to later tell Appellant that it was denied after Appellant had been using the medication for weeks.

Given the above policy and evidence, Appellant has failed to satisfy his burden of proving by a preponderance of the evidence that the MHP erred. The MHP properly requires that non-formulary medications, such as the one in this case, be authorized prior to the prescription being filled and no such prior authorization was given in this case. The MHP also gave Appellant's doctor an opportunity to resubmit the request with additional information, if formulary medications had already been tried and failed, but no new request was submitted. Moreover, while the MHP should have sent Appellant, and not just his doctor, written notice that the prior authorization request was denied, it failure to do so is understandable given the notices it sent to Appellant's doctor and the fact that a prescription for a formulary medication was subsequently filled.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that:

- The undersigned Administrative Law Judge lacks jurisdiction over Appellant's claims regarding difficulties with transportation.
- The MHP properly denied Appellant's prior authorization request for the medication Cialis.

IT IS THEREFORE ORDERED that:

- The Medicaid Health Plan's decision in this case is **AFFIRMED.**

Steven Kibit

Steven Kibit
Administrative Law Judge
for Director, Nick Lyon
Michigan Department of Health and Human Services

Date Signed: [redacted]
Date Mailed: [redacted]
SK/db
cc: [redacted]

***** NOTICE *****

The Michigan Administrative Hearing System 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.