

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICE**

P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 373-4147

IN THE MATTER OF:

████████████████████,

Appellant.

_____ /

Docket No. 15-001344 PA
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.*, and upon Appellant's request for a hearing.

After due notice, a telephonic hearing was held on ██████████. Appellant appeared and testified on his own behalf.

████████████████████, Appeals Review Officer, represented the Department of Community Health. ██████████, Manager of the PACER Project testified as a witness for the Department.

ISSUE

Did the Department properly deny Appellant's prior authorization request for Liquid Hope?

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 an extremely articulate ██████ year old year-old Medicaid beneficiary who has a diagnosis of cystic fibrosis with pancreatic insufficiency. Due to his diagnosis, Appellant needs extra calories every day due to his failure to absorb nutrients and has a milk intolerance. Appellant is 5'5", 120 pounds with a BMI of 18.3. (Exhibit A; Testimony).
2. On ██████████ the Department received a call from Appellant's physician's office for Liquid Hope of 1320 calories per day via tube. Appellant needs a total of 2500-4500 calories per day. (Exhibit A.1).
3. Appellant's use of his standard supplement results in abdominal pains. Appellant can only consume one of these supplements at a time. (Exhibit A.1).

4. Liquid Hope is considered a liquid form of food under the DCH policy found in the Medicaid Provider Manual (MPM). Liquid foods are a non-covered service under the state Medicaid program. (Exhibit A.48).
5. On ██████████ the Department issued a Notification of Denial on the grounds that Liquid Hope is a liquid form of food and a non-covered service in the MPM. (Exhibit A.27)
6. The Department requested an ██████████ physician review. The Department contracts with ██████████ to conduct telephonic and electronic authorizations of specified medical supplies and services. (Testimony). ██████████ attempted to contact Appellant's physician 3 times and was not successful. (Exhibit A.1)
7. On ██████████ the Department issued a 2nd level denial on the grounds that Liquid Hope is a non-covered service as it is classified under the MPM as a liquid form of food. (Exhibit A.9).
8. On ██████████ the Department issued a final determination denial after review upholding the initial denial on the grounds that Liquid Hope is a blended food not a covered item in the MPM; it is not the most cost-effective option; and the assertion that the patient must avoid whey, soy and corn by-products is not supported by the patient self-reported diet. (Exhibit A.45).
9. On ██████████, the Michigan Administrative Hearing System received a request for hearing filed by Appellant. (Exhibit A.4).

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).

Regarding the specific request in this case, the applicable version of the MPM states in part:

2.13 ENTERAL NUTRITION

Enteral nutrition is nutrition administered by tube or orally into the gastrointestinal tract. Enteral nutrition is classified into categories that possess similar characteristics. Categories for enteral nutrition are listed by HCPCS codes on the MDCH Medical Supplier/DME/Prosthetics and

Orthotics Database on the MDCH website. For the appropriate HCPCS code, products are listed on the enteral nutrition product classification list on the website for the Medicare Pricing, Data Analysis and Coding (PDAC) contractor. If the formula is not listed in the covered HCPCS codes, the provider must contact the PDAC contractor for a coding determination. (Refer to the Directory Appendix for website and contact information.)

2.13.A. ENTERAL NUTRITION (ADMINISTERED ORALLY)

Standards of Coverage

Enteral nutrition (administered orally) may be covered for beneficiaries under the age of 21 when:

- A chronic medical condition exists resulting in nutritional deficiencies and a three-month trial is required to prevent gastric tube placement, or
- Supplementation to regular diet or meal replacement is required, and the beneficiary's weight-to-height ratio has fallen below the fifth percentile on standard growth grids, or
- Physician documentation details low percentage increase in growth pattern or trend directly related to the nutritional intake and associated diagnosis/medical condition.

For CSHCS coverage, a nutritionist or appropriate pediatric subspecialist must indicate that long-term enteral supplementation is required to eliminate serious impact on growth and development.

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, or
- The nutritional composition of the formula represents an integral part of treatment of the specified diagnosis/medical condition, or

- 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.

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, April 1, 2015 version
Medical Supplier Chapter, pages 35-36

More specific to the issue here, the Medical Supplier Chapter of the MPM lists non-covered items in Section 1.10. That Section states in part that items that are not covered by Medicaid include "Nutritional formula representing only a liquid form of food..." MPM, January 1, 2015 version; Medical Supplier Chapter, pages 17-18.

Here, the Department argues that Liquid Hope falls under the liquid food section, a non-covered item. Appellant argues that due to his high caloric intake needed and his method of intake, he must subject himself to extra-ordinary amount of intake, and, that he has an intolerance to many of the standard and concentrated ingredients on the market that cause nausea, discomfort, and an intolerance by his digestive system. Most make him sick. However, the Liquid Hope is tolerated must better, without nausea, bloating or general illness.

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Appellant bears the burden of proving by a preponderance of the evidence that the Department erred in denying his prior authorization request. Based on the evidence in this case, Appellant has failed to meet that burden of proof.

The above policy clearly provides that any product that falls under a form of liquid food is not a covered item under the MPM. The purview of an administrative law judge (ALJ) is to review the Department's action and to make a determination if those actions are in compliance with Department policy, and not contrary to law. The ALJ must base the hearing decision on the preponderance of the evidence offered at the hearing or otherwise included in the record. The ALJ at an administrative hearing must base a decision upon the evidence of record focusing at the time of the assessment. If this ALJ could decide outside the parameters of the law and policy, she would certainly approve Appellant. However, this ALJ has no jurisdiction or authority to reverse the Department where the policy is clear, and where the policy requires the denial when applied to the facts. ALJs have no equitable powers

Accordingly, Appellant has failed to meet his burden of proving by a preponderance of the evidence that the Department erred in denying the prior authorization request and that denial must be sustained.

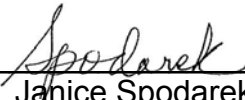
To the extent that Appellant has new or updated information he wants to provide, he is free to submit another prior authorization request at any time. It was noted by the Department that the Department was unable to discuss this case with Appellant's physician. In any case, this denial must be affirmed based on the evidence of record. As noted, Appellant may reapply.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly denied Appellant's prior authorization request for Liquid Hope.

IT IS THEREFORE ORDERED THAT:

The Department's decision is **AFFIRMED**.



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

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

JS/ [REDACTED]

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 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.