

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**
P.O. Box 30763, Lansing, MI 48909
(517) 335-2484; Fax: (517) 373-4147

IN THE MATTER OF:

Docket No. 15-013420 MHP

██████████

██████████

██████████

Appellant

_____ /

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, a telephone hearing was held on ██████████. Appellant appeared and testified on her own behalf. ██████████, Inquiry Dispute Appeals Resolution Coordinator, appeared on behalf of ██████████, the Respondent Medicaid Health Plan (MHP). ██████████, Medical Director, testified as a witness for the MHP.

ISSUE

Did the MHP properly deny Appellant's prior authorization requests for (1) epidural steroid injections; (2) an Magnetic Resonance Imaging (MRI) of the neck spine; and (3) medications?

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 who is enrolled in the Respondent MHP. (Exhibit A, page 7).
2. On ██████████, Appellant's doctor submitted a prior authorization request on Appellant's behalf, along with supporting documentation, requesting epidural steroid injections for Appellant. (Exhibit A, page 7-34).
3. On ██████████, the MHP sent Appellant written notice that her prior authorization request for epidural steroid injections was denied on the basis that the submitted clinical documentation did not satisfy the criteria for approving such injections. (Exhibit A, page 34).

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4. Between ██████████ and ██████████, the MHP repeatedly denied bills/claims for Orphenadrine Citrate 100 mg tablets (Norflex) submitted by Appellant's pharmacy that would cover three daily doses of that medication. (Exhibit C, pages 12-14).
5. While denying the bills/claims for three daily doses of Norflex, the MHP would also pay bills/claims for two daily doses of the medication. (Exhibit C, pages 12-14).
6. On at least one occasion, ██████████, a prior authorization request was submitted on Appellant's behalf by her doctor for the three daily doses of Norflex. (Exhibit C, page 18).
7. The MHP responded to that prior authorization request by noting that it covers a twice-daily dosage of Norflex without requiring a prior authorization request and informing the pharmacy that it should correct the claim. (Exhibit C, pages 15, 17-18).
8. No written notice of denial regarding the prior authorization request for the three daily doses of Norflex was ever sent to Appellant or her doctor. (Testimony of Appellant; Testimony of MHP's Medical Director).
9. On ██████████, Appellant's doctor submitted a prior authorization request on Appellant's behalf, along with supporting documentation, requesting an MRI of the neck spine for Appellant. (Exhibit B, pages 8-35).
10. On ██████████, the MHP sent Appellant written notice that her prior authorization request for an MRI of the neck spine was denied because Appellant did not meet the rules for the test. (Exhibit B, pages 6-7).
11. On ██████████, the MHP paid a claim for the medication Dronabinol 10 Mg (Marinol) submitted by Appellant's pharmacy. (Exhibit C, page 11).
12. On ██████ ██████ ██████ Appellant's doctor submitted another prior authorization request on Appellant's behalf for the medication Marinol. (Exhibit C, page 19).
13. On ██████████, the MHP sent Appellant written notice that the prior authorization request for Marinol was denied on the basis that it did not meet the MHP's formulary coverage criteria. (Exhibit C, pages 19-21).
14. Specifically, the notice stated:

The diagnosis, for which Marinol is being prescribed, is not an FDA-approved indication.

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A minimum of (2) peer-reviewed literature articles in the form of prospective, placebo-controlled trials to show that the use is safe and effective is required for submission and has not been received. In addition, there must be documentation that Off-Label use for Marinol is recognized for treatment for the condition for which it is prescribed. Please discuss your plan of care with your physician.

Exhibit C, page 19

15. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received the request for hearing filed by Appellant in this matter regarding the denials of her request for epidural steroid injections; an MRI of the neck spine; and the medications Norflex and Marinol. (Exhibit 1, pages 1-8).
16. After the request for hearing was filed, but before the hearing in this matter was held, Appellant was approved for an MRI of the neck spine and that issue was resolved. (Testimony of Appellant).

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 statutes, 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

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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, April 1, 2015 version
Medicaid Health Plan Chapter, page*

Here, as discussed above, Appellant identified three types of denials at issue in her request for hearing: (1) the denial of epidural steroid injections; (2) the denial of an MRI of the neck spine; (3) and the denials of requests for the medications Norflex and Marinol.

With respect to the denial of epidural medications, the MHP moved for dismissal on the basis that the request for hearing was untimely as to that issue and that the undersigned Administrative Law Judge therefore lacked jurisdiction.

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 MHP 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. See 42 CFR 431.221(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.").

Here, it is undisputed that the negative action notice from the MHP pertaining to the issue of steroid injections sent on [REDACTED] while Appellant's request for hearing was not received until [REDACTED] Appellant's request for hearing therefore

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clearly exceeded the 90 day time period to request a fair hearing and, while Appellant testified that the delay in filing occurred because she was waiting for records and going over information, that is no exception to the clear regulation. This Administrative Law Judge therefore lacks jurisdiction over Appellant's claim regarding epidural steroid injections and the claim must be dismissed.

With respect to the denial of an MRI of the neck spine, Appellant testified that the issue was subsequently taken care of and resolved. Accordingly, Appellant's claim regarding an MRI is also dismissed.

With respect to the denials of the requests for the medications Norflex and Marinol, Appellant bears the burden of proving by a preponderance of the evidence that the Department erred in denying her requests.

Regarding the denial of Norflex, the undersigned Administrative Law Judge finds that Appellant has met that burden of proof as the MHP failed to give the notice required by the Code of Federal Regulations and its error was not harmless.

Federal regulations require that the MHP provide written notice when it denies a request for services and, among other things, that written notice must explain the action being taken, the reason for the action, and the Appellant's right to file an appeal. See 42 CFR 438.402 and 42 CFR 438.404.

Here, with respect to the denial of Norflex, it is undisputed that the MHP never provided any written notice. Instead, the MHP asserts that it resolved that prior authorization request by both informing the pharmacy that it should correct its claim to only request a twice-daily dose of dosage of Norflex and by approving any such claims that were submitted. The MHP's Medical Director also testified that the FDA and plan guidelines will only allow two tablets per day of Norflex and that, if a beneficiary or provider want to go outside the FDA recommendations, a prior authorization request must be submitted and the plan will review it. He further testified that the MHP did so in this case, but there was nothing submitted along with the prior authorization request and no basis for approving tablets three times a day. In response, Appellant testified that her doctor submitted at least three prior authorization requests, along with supporting documentation, and did everything the MHP asked him to.

Given that a prior authorization request was submitted and denied, the MHP must provide written notice of that denial. It clearly failed to do so in this case and it therefore erred in denying the request for Norflex. Moreover, the undersigned Administrative Law Judge cannot deem the error to be harmless given that, while the MHP's Medical Director testified in support of the denial, his testimony is contradicted by Appellant and the limited evidence in the record fails to support either side. Accordingly, the MHP's decision on Norflex must be reversed and Appellant's request reassessed.

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Regarding the denial of Marinol, the undersigned Administrative Law Judge also finds that Appellant has met her burden of proof. The MHP did provide Appellant with a written notice of denial with respect to Marinol, with the notice stating that the request was denied because the diagnosis for which the Marinol was being prescribed, chronic pain, is not an approved diagnosis for the medication and there was no documentation supporting off-label use. The MHP's Medical Director also testified that other medications are available for treating chronic pain. However, Appellant credibly testified that the Marinol was not being prescribed for chronic pain and she correctly noted that it has been approved by the MHP as recently as ██████████. Given that credible testimony and the lack of any documentary evidence contradicting it from the MHP, the undersigned Administrative Law Judge finds that Appellant has met her burden of proving that the MHP erred in denying the request for Marinol. The MHP's decision must therefore be reversed and Appellant's request reassessed.

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 claim regarding epidural steroid injections; Appellant's claim regarding an MRI of the neck spine is resolved and withdrawn; and that the MHP erred in denying Appellant's requests for medications.

IT IS THEREFORE ORDERED that:

- 1) Appellant's claims regarding epidural steroid injections and MRI of the neck spine are **DISMISSED**.
- 2) The MHP's denials of the requests for Norflex and Marinol are **REVERSED** and it must initiate a reassessment of Appellant's prior authorization requests.

Steven Kibit

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

Date Signed: ██████████

Date Mailed: ██████████

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SK/db

cc:

[REDACTED]
[REDACTED]
[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.