

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
P.O. Box 30763, Lansing, MI 48909
(517) 373-0722; Fax: (517) 373-4147**

IN THE MATTER OF:

MAHS Docket No. 15-021135 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 his own behalf. ██████████ General Counsel, represented ██████████ the Respondent Medicaid Health Plan (MHP). ██████████, Medical Director, testified as a witness for the MHP. ██████████ paralegal, was also present for the MHP.

ISSUE

Did the MHP properly deny Appellant's prior authorization request for the medications Ribavarin and Sovaldi?

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. (Exhibit A, page 7).
2. On or about ██████████, the MHP received prior authorization requests submitted on behalf of Appellant by his doctor and requesting a combination of the medications Ribavarin and Sovaldi for the treatment of Appellant's Hepatitis C. (Exhibit A, pages 7-32).
3. On ██████████ the MHP sent Appellant written notices that the prior authorization request was denied. (Exhibit A, pages 5-6, 33-34).

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4. With respect to reason for the denial, the notices both stated in part:

The request does not meet the health plan's reason(s) for an exception to the Medicaid Preferred Drug List (PDL), also sometimes known as the formulary. Other medications are available on the Preferred Drug List that may work for you.

This medication is not a covered benefit the member's pharmacy benefits package

Exhibit A, pages 5, 33

5. On ██████████ the Michigan Administrative Hearing System (MAHS) received the request for hearing filed in this matter. (Exhibit A, page 4).

CONCLUSIONS OF LAW

1. Jurisdiction

As a preliminary matter, the MHP moves for dismissal in this case on the basis that the request for hearing was untimely and that the undersigned Administrative Law Judge lacks jurisdiction in this case.

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:

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)

Here, it appears that the request for hearing in this case exceeded the ██████ day time period to request a fair hearing as the notices of denial in the record were dated ██████████ while the request for hearing was not received until ██████████

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However, it is not clear that the notices of denial in the record were the only notices sent, as Appellant claims that there are more recent denials, or that they are sufficient to satisfy due process, as they do not inform Appellant of his right to request an administrative hearing in addition to requesting a local appeal. Accordingly, given those questions, Respondent's motion is denied.

2. Merits

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

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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 1
(Emphasis added by ALJ)*

Similarly, the MHP's contract with the Department provides:

The Contract may have a prescription drug management program that includes a drug formulary. DCH may review the Contractor's formularies regularly, particularly if enrollee complaints regarding access of care have been filed regarding the formulary. The Contractor must have a process to approve physicians' requests to prescribe any medically appropriate drug that is covered under the Medicaid Pharmaceutical Product List (MPPL).

*Exhibit A, page 37
(Emphasis added)*

Pursuant to the above policy and its contract with the Department, the MHP has developed a drug management program that includes a drug formulary and provides that its covered services are subject to the limitations and restrictions described in the MHP's Medicaid agreement, the MPM, Medicaid bulletins, and other directives.

In this case specifically, the denial of the prior authorization request was based on the fact that Sovaldi is not covered under either the MHP's drug formulary or the MPPL. (Exhibit A, page 34).

In response, Appellant testified that he needs the medications and that his doctor strongly suggests that he take at least one of them. He also testified that he was told by doctors that there are exceptions to the above policy available and that other patients have received the medications; and that Michigan recently released funds to cover them. Appellant further testified that a friend of his, who is also on disability, received the medications.

However, Appellant's claims of exceptions or additional coverage are completely unsupported and, 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 in

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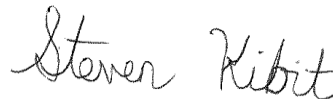
denying the prior authorization requests. The requested combination of medications includes a medication that is not on the MHP's formulary or the State of Michigan's MPPL. Accordingly, the request did not meet the coverage criteria under policy and could not be approved.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the MHP properly denied Appellant's prior authorization requests.

IT IS THEREFORE ORDERED that:

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



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

Date Mailed: [REDACTED]

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.