RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

Date Mailed: July 25, 2016
MAHS Docket No.: 16-007149
Agency No.:
Petitioner:

ADMINISTRATIVE LAW JUDGE: Landis Lain

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.,* upon the Petitioner's request for a hearing.

After due notice, a hearing was held on July 19, 2016. Petitioner and her son appeared on behalf of the Petitioner; , Lead Grievance and Appeals, represented the Medicaid Health Plan (MHP or Respondent).

Respondent's Exhibit A pages 1-35 were admitted as evidence.

ISSUE

Did the Medicaid Health Plan properly deny Petitioner's request for the medication Lovaza?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. (MHP) is contracted with the state of Michigan to arrange for the delivery of health services to Medicaid recipients.

2. At all times relevant to this case, Petitioner was enrolled in the MHP.

3. On May 20, 2016, Respondent received a Prior Authorization request from Petitioner's physician, requesting the medication omega-3-acid ethyl esters (generic Lovaza) for treatment of cardiovascular disease.

4. On May 23, 2016, the , reviewed the information and denied the request.

5. On May 23, 2016, Notice of Denial was mailed to Petitioner and her Medical doctor.

6. On June 7, 2016, the Michigan Administrative Hearing System received a Request for Hearing to contest the denial of Lovaza.

CONCLUSIONS OF LAW

The Medical Assistance Program (MA) 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.

On May 30, 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 Medicaid Health Plans.

> The covered services that the Contractor has available for enrollees must include, at a minimum, the covered services listed below (List omitted by Administrative Law Judge). The Contractor may limit services to those which are medically necessary and appropriate, and which conform to professionally accepted standards of care. Contractors must operate consistent with all applicable Medicaid provider manuals and publications for coverages and limitations. If new services are added to the Michigan Medicaid Program, or if services are expanded, eliminated, or otherwise changed, the Contractor must implement the changes consistent with State direction in accordance with the provisions of Contract Section 1-Z.
>
> *Article II-G, Scope of Comprehensive Benefit Package.*
> *MDHHS contract (Contract) with the Medicaid Health Plans,*
> *September 30, 2004.*

> The major components of the Contractor's utilization management plan must encompass, at a minimum, the following:

- Written policies with review decision criteria and procedures that conform to managed health care industry standards and processes.
- A formal utilization review committee directed by the Contractor's medical director to oversee the utilization review process.
- Sufficient resources to regularly review the effectiveness of the utilization review process and to make changes to the process as needed.
- An annual review and reporting of utilization review activities and outcomes/interventions from the review.

The Contractor must establish and use a written prior approval policy and procedure for utilization management purposes. The Contractor may not use such policies and procedures to avoid providing medically necessary services within the coverages established under the Contract. The policy must ensure that the review criteria for authorization decisions are applied consistently and require that the reviewer consult with the requesting provider when appropriate. The policy must also require that utilization management decisions be made by a health care professional who has appropriate clinical expertise regarding the service under review.

Article II-P, Utilization Management, Contract, September 30, 2004.

As stated in the Department-MHP contract language above, a MHP "must operate consistent with all applicable Medicaid Provider Manuals and publications for coverages and limitations."

Petitioner testified that she cannot take any other medication.

Respondent alleges that usage of omega-3 acid ethyl esters 1 gram capsule does not meet the coverage criteria as outlined in [redacted]'s Drug Formulary policy. (Attachment D). This is the policy that identifies drugs that are approved for use. Petitioner's physician is aware of [redacted]'s drug policy and the coverage criteria. Omega-3-acid ethyl esters (generic for Lovaza) is a covered drug on the Approved Drug List (formulary) that required prior approval/authorization. The criteria requires that a patient be using it to treat hypertriglyceridemia (high triglyceride blood levels) and have a laboratory test confirming that Petitioner's triglyceride level is 500 mg/dl or higher. Petitioner's submitted records do not show that Petitioner ever had a triglyceride level of 500 mg/dl or higher.

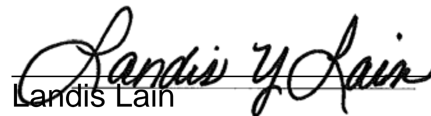
Petitioner has failed to satisfy the burden of proving by a preponderance of the evidence that the MHP improperly denied the requested medication. The denial is based upon the MHP determination that Petitioner does not meet the prior authorization criteria in accordance with the ██████ Pharmacy Prior Authorization for Lovaza (Omega-3-acid ethyl esters). The Medicaid Health Plan (MHP) does not have discretion to approve Petitioner's request for items for which she does not meet approval criteria. The decision to deny the request for authorization must be upheld under the circumstances.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, decides that the MHP properly denied Petitioner's Prior Authorization request.

IT IS, THEREFORE, ORDERED that:

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



LL/██

Landis Lain
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30763
Lansing, Michigan 48909-8139

DHHS -Dept Contact

Community Health Rep

Petitioner