



RICK SNYDER
GOVERNOR

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

MIKE ZIMMER
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
MAHS Docket No.: 16-001105
[REDACTED]
[REDACTED]

ADMINISTRATIVE LAW JUDGE: Steven Kibit

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 the Petitioner's request for a hearing.

After due notice, a hearing was held on [REDACTED]. Petitioner appeared and testified on his own behalf. [REDACTED], Assistant General Counsel, represented [REDACTED] [REDACTED] [REDACTED], the Respondent Medicaid Health Plan (MHP). [REDACTED], Clinical Pharmacist, testified as a witness for Respondent.

ISSUE

Did the Medicaid Health Plan properly deny Petitioner's prior authorization request for Voltaren-XR 100 Mg tablets?

FINDINGS OF FACT

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

1. Petitioner is a [REDACTED]-year-old Medicaid beneficiary who is enrolled in the Respondent MHP. (Exhibit A, page 3).
2. On or about [REDACTED] the MHP received a prior authorization request submitted on behalf of Petitioner by his doctor and requesting Voltaren-XR 100 Mg tablets for Petitioner. (Exhibit A, page 3).
3. Voltaren-XR 100 Mg tablets are not on the list of covered medications in Respondent's medications formulary. (Exhibit A, pages 17-161; Testimony of Respondent's Clinical Pharmacist).

4. On [REDACTED], the MHP sent Petitioner written notice that the prior authorization request was denied because the request did not meet coverage criteria and the medication was not a covered benefit under the MHP's 2016 Medicaid Formulary. (Exhibit A, pages 4-9).
5. The notice also directed Petitioner to discuss alternative medications that are on the formulary, such as Diclofenac EC 75 Mg tablets and Diclofenace Potassium 50 Mg tablets. (Exhibit A, pages 4-9).
6. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received the request for hearing filed in this matter. (Exhibit 1, pages 1-8).

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.

*MPM, January 1, 2016 version
Medicaid Health Plan Chapter, page 1
(Emphasis added by ALJ)*

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, among other things, that formulary medications must be tried prior to non-formulary medications and that non-formulary medications will only be approved if the formulary medications have failed.

In this case specifically, as provided in the denial notice and credibly testified to by the MHP's witness, the denial of the prior authorization request was based on the fact that the requested medication is not on the MHP's drug formulary; alternative medications are listed on the drug formulary, and there is no evidence that the formulary medications have been tried and failed.

In response, Petitioner testified that the medications he has been on since [REDACTED] are not working and that he needs the medication requested in this case for his knee pain. He also testified that he and his doctor have discussed alternative medications, but not since the denial in this case.

Petitioner has the burden of proving by a preponderance of the evidence that the MHP erred in denying his prior authorization request. Moreover, the undersigned Administrative Law Judge is limited to reviewing the MHP's decision in light of the information that was available at the time the decision was made.

Given the above policy and evidence in this case, Petitioner has failed to satisfy his burden of proof and Respondent's decision must be affirmed. Pursuant to both its contract and the MPM, the MHP is allowed to have a drug management program that includes a drug formulary and that requires a beneficiary to both use formulary medications prior to non-formulary medications and to demonstrate a medical necessity for the non-formulary medications prior to them being approved. Those are the

guidelines used by the MHP in this case and Petitioner has failed to show that any formulary medications have failed, or even been tried, as the prior authorization request submitted in this case does not identify any such medications and Petitioner's testimony regarding past medications both lack details and is unsupported.

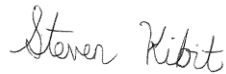
To the extent Petitioner has additional or updated information regarding the failure of formulary medications, he and his doctor can always submit a new prior authorization request with that additional information and, if the request is again denied, he can file another request for hearing. With respect to the issue in this case however, Respondent's decision must be affirmed given the available information.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, decides that Respondent properly denied Petitioner's prior authorization request.

IT IS, THEREFORE, ORDERED that:

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



SK/db

Steven Kibit
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

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

DHHS -Dept Contact

[REDACTED]
[REDACTED]
[REDACTED]

Community Health Rep

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]