



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: June 22, 2016
MAHS Docket No.: 16-006174
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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 [REDACTED]. Petitioner [REDACTED] and her friend [REDACTED] appeared on behalf of the Petitioner. [REDACTED], Lead, Grievance and Appeals appeared on behalf of [REDACTED], the Medicaid Health Plan (MHP or Respondent).

Respondent's Exhibit A pages 1-66 were admitted as evidence.

ISSUE

Did the Department properly deny Petitioner's request for prior authorization?

FINDINGS OF FACT

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

1. Priority Health (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 as a member with the MHP.
3. The [REDACTED] Member Handbook and Certificate of Coverage were sent at the time of enrollment. The Member Handbook outlines coverage limitations, prior authorization requirements, limitations and exclusions, and the pharmacy guidelines.

4. On [REDACTED] and [REDACTED] [REDACTED] Pharmacy Department received a Prior Authorization request for Viberzi.
5. On [REDACTED] and [REDACTED], the request was considered and denied and Notice of Denial was sent to Petitioner.
6. On [REDACTED], [REDACTED] received a Request for Hearing from the Michigan Administrative Hearing System, from Petitioner, contesting the denial of Viberzi.

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."

The Michigan Medicaid Formulary does not include the medication Viberzi as a covered benefit. Viberzi was not a Medicaid covered benefit at the time of the request. Petitioner's doctor did initiate a Level II internal review and requested for an exception to policy indicating that waiting for approval of the drug would put Petitioners health in jeopardy.

Petitioner's physician may ask for an exception, but the prescriber needs to explain the medical reasons why Petitioner needs an exception approved; why other covered drugs are not medically appropriate for Petitioner's condition, and why waiting to start this drug until after the review process is complete may seriously jeopardize Petitioner's health.

The Determination of whether or not Petitioner meets the criteria for a Medicaid Policy Exception will be decided by [REDACTED] on [REDACTED] to determine if the drug is medically appropriate and waiting to start treatment will cause significant complications to Petitioner's health, the prescriber should provide a new prior authorization request.

On review, the Department's decision to deny the request for Viberzi was reached within policy. The department has established by the necessary competent, material and substantial evidence on the record that it acted in compliance with department policy when it denied Appellant's prior authorization request for Viberzi because the drug is not covered by either the State of Michigan fee-For-Service Medicaid program or the [REDACTED] Medicaid/Healthy Michigan program. This Administrative Law Judge has no equity powers and cannot make a decision in contravention of Department policy.

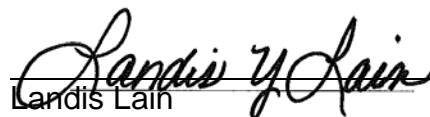
DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, decides that [REDACTED] properly denied Petitioner's Prior Authorization request for Viberzi because the drug is not on the State of Michigan's Medicaid Fee-For-Service Michigan Pharmaceutical Product List of covered Drugs.

IT IS, THEREFORE, ORDERED that:

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

LL [REDACTED]



Sandis 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

[REDACTED]

Petitioner

[REDACTED]

Community Health Rep

[REDACTED]