



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: February 2, 2017
MAHS Docket No.: 16-017395
Agency No.: [REDACTED]
Petitioner: [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 telephone hearing was held on January 24, 2017. Petitioner appeared and testified on his own behalf [REDACTED], Lead Coordinator for Grievance and Appeals, appeared and testified on behalf of [REDACTED] the Respondent Medicaid Health Plan (MHP).

ISSUE

Did the Medicaid Health Plan properly deny Petitioner's prior authorization request for Embeda 50 mg-2 mg capsule, extended release, oral only?

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 forty-six-year-old Medicaid beneficiary who is enrolled in the Respondent MHP. (Exhibit A, page 3).
2. On November 21, 2016, Respondent received a prior authorization request by fax submitted on Petitioner's behalf by his doctor that requested Embeda 50 mg-2 mg capsule, extended release, oral only, for Petitioner. (Exhibit A, pages 9-16).
3. As part of that request, Petitioner's doctor wrote that Petitioner has a history of chronic pain, osteoarthritis and post-procedural pain that require pain medications. (Exhibit A, page 14).

4. The doctor also wrote that Petitioner has been overusing or misusing and her doctor feels that Petitioner need an abuse deterrent because Petitioner is to high risk to continue on Fentanyl. (Exhibit A, page 14).
5. Petitioner's doctor further wrote that Petitioner has tried morphine sulfate ER, OxyContin, and Fentanyl in the past, but that she is too high risk to use them or methadone. (Exhibit A, page 14).
6. The doctor also appeared to indicate that Petitioner was given the medications Norco, Ultram, Oxycodone, Dilaudid, Vicodin and Lortab in the past. (Exhibit A, page 14).
7. Embeda 50 mg-2 mg capsule, extended release, oral only, is not on the list of covered medications in Respondent's medication formulary. (Exhibit A, pages 30-31; Testimony of Respondent's representative).
8. On November 22, 2016, the MHP sent Petitioner written notice that the prior authorization request was denied. (Exhibit A, pages 18-19).
9. Regarding the reason for the denial, the notice stated in part:

Usage of Embeda 50 mg-2 mg capsule extended release, oral only does not meet the coverage criteria as outlined in Priority Health's drug policy. This is the policy that identifies drugs that are approved for use. Your physician is aware of our drug policy and the coverage criteria. Embeda is not on the List of Covered Drugs (also called out formulary). Priority Health does not cover all prescription drugs. You asked us to make an exception and cover this drug. Before we make an exception, your prescriber needs to explain the medical reasons why you need this exception approved. Because there are other drugs on our Drug List for your condition and your prescriber has not explained why these other drugs cannot be used, we've determined that it's not medically necessary to make an exception. Your other choices on the Drug List include codeine sulfate tablets, fentanyl patches, hydromorphone tablets, methadone tablets, morphine sulfate ER, and tramadol tablets. For more information, please refer to the prescription rider in your Certificate of Coverage or Priority Health's Pharmacy Drug Policy.

Exhibit A, page 18

10. On November 23, 2016, Petitioner's doctor and a physician from Respondent discussed the denial, with Respondent's physician explaining the nonformulary status of the requested medication, but also noting that both of the agents in the requested medication are available separately, and Petitioner's doctor stating that the doctor strongly felt that they needed to be provided in combination. (Exhibit A, page 10).
11. On November 28, 2016, the Michigan Administrative Hearing System (MAHS) received the request for hearing filed in this matter. (Exhibit 1, pages 4-7).

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, October 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 Respondent's representative, 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 all of the formulary medications have been tried and failed. Respondent's representative noted that some of the alternative medications have been tried, but not all of them and that, additionally, both of the agents in Petitioner's requested medication are available separately.

In response, Petitioner testified that she understands why the request was denied, but also testified that her doctor has specifically prescribed this for her. She also testified that she was on Norco for thirty years and is possibly getting addicted to it. Petitioner further testified that she is allergic to tramadol.

Petitioner has the burden of proving by a preponderance of the evidence that the MHP erred in denying her 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 not shown that all of the formulary medications have failed. The prior authorization request submitted in this case only addressed some of those alternatives and the attached information failed to address those alternatives in much detail.

To the extent Petitioner has additional or updated information regarding the failure of formulary medications, she and her doctor can always submit a new prior authorization request with that additional information and, if the request is again denied, she 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/tm



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

DHHS -Dept Contact

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