RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[redacted]

Date Mailed: March 7, 2017
MAHS Docket No.: 17-000165
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 February 28, 2017. At Petitioner's request on the record, [redacted], Petitioner's wife, appeared and testified on Petitioner's behalf.[1] [redacted], Assistant General Counsel, represented [redacted] Respondent Medicaid Health Plan (MHP). [redacted], registered pharmacist, testified as a witness for Respondent.

ISSUE

Did the Medicaid Health Plan properly deny Petitioner's prior authorization request for Restasis 0.05% Eye Emulsion?

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 fifty-seven-year-old Medicaid beneficiary who is enrolled in the Respondent MHP. (Exhibit A, page 5).

2. On December 21, 2016, Respondent received a prior authorization request by fax submitted on Petitioner's behalf by his doctor for Restasis 0.05% Eye Emulsion. (Exhibit A, pages 5-6).

3. On the prior authorization request form, Petitioner's doctor wrote that

[1] Petitioner's request for hearing identified a different Authorized Hearing Representative, but she was not present for the hearing and Petitioner stated on the record that he was proceeding without her.

Petitioner has a diagnoses of sicca syndrome with keratoconjunctivitis and that he is not responding to standard treatment, with "FML" being ineffective and "xidra" denied by Petitioner's insurance company. (Exhibit A, page 5).

4. The doctor also wrote that Petitioner has been "using Artificial tears 4-6 times daily, taking omega 3 fatty acids, Artificial Tear ointment at bedtime and warm compresses fro [sic] 10 minutes every morning followed by massage." (Exhibit A, page 6).

5. On December 23, 2016, the [redacted] sent Petitioner written notice that the prior authorization request was denied. (Exhibit A, pages 7-16).

6. Regarding the reason for the denial, the notice stated in part:

> The reason for this action is the clinical information submitted does not support the [redacted] Plan policy for use of the medication(s) not included in the [redacted] formulary.
>
> [redacted] has reviewed this request and determined that it does not meet [redacted] coverage criteria. RESTASIS 0.05 % is not a covered benefit on the 2016 MHP Medicaid Formulary[redacted] of covered drugs). Please discuss with your physician an alternative medication on the [redacted] Formulary.

Exhibit A, page 15

7. On January 13, 2017, the Michigan Administrative Hearing System (MAHS) received the request for hearing filed in this matter with respect to that denial. (Exhibit 1, page 3).

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 [redacted] drug formulary; alternative medications are listed on the drug formulary, and there is insufficient evidence that all of the formulary medications have been tried and failed. Respondent's representative noted that, while the prior authorization form appears to provide that some of the alternative medications have been tried, there is no specific clinical information or medical documentation supporting the request.

In response, Petitioner's representative testified Petitioner has been working with his doctor and a specialist to treat his condition for almost a year and that they have tried "everything", but that nothing is working. She also testified that they were following Petitioner's doctor's advice in requesting the new medication and requesting a hearing when the new medication was denied. She further indicated that Petitioner and his doctor could provide additional information regarding what other medications have been tried without success.

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 [redacted] 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 [redacted] the [redacted] 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 [redacted] in this case and Petitioner has not shown that all of the formulary medications have failed. The prior authorization request broadly stated that standard treatment has failed, but it was not supported by any other documentation regarding what specific alternatives have been tried. Similarly, Petitioner's representative's testimony that "everything" has been tried is insufficient in the absence of any supporting medical documentation.

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, 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 for Restasis 0.05% Eye Emulsion.

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

[redacted]

[redacted]

[redacted]