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GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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Date Mailed: March 24, 2017
MAHS Docket No.: 17-000570
Agency No.: ██████████
Petitioner: ██████████

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 a request for a hearing filed on the minor Petitioner's behalf.

After due notice, a telephone hearing was held on March 7, 2017. ██████████, Petitioner's ██████████, appeared and testified on Petitioner's behalf. Petitioner was also present for the hearing. ██████████, Associate Appeal and Grievance Specialist, appeared and testified on behalf of ██████████, the Respondent Medicaid Health Plan (MHP). ██████████, ██████████, also testified as a witness for the MHP.

ISSUE

Did the Respondent properly deny Petitioner's prior authorization request for genetic testing?

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 fifteen-year-old male enrolled in the Respondent MHP. (Exhibit A, page 4).
2. On November 10, 2016, Respondent received a prior authorization request submitted on Petitioner's behalf for genetic testing. (Exhibit A, pages 3-8).
3. On the form itself, Petitioner's diagnoses were identified as autism spectrum disorder and tall stature. (Exhibit A, page 4).

4. The documentation provided along with that request indicated that Petitioner's primary care physician was recommending a genetics evaluation because of Petitioner's learning disabilities and behavioral problems. (Exhibit A, page 5).
5. The documentation also provided that, while Petitioner had recently been evaluated at the [REDACTED] due to concerns of Marfan syndrome, the doctors there now had a very low suspicion for that disorder. (Exhibit A, pages 5, 7).
6. Instead, those doctors agreed that Petitioner deserved continued workup for his developmental concerns and they were requesting genetic testing that may "identify reasons for his developmental delays in reading and behavioral concerns including autism spectrum disorder." (Exhibit A, page 7).
7. The evaluation also provided:

An accurate genetic diagnosis would assist with the following:

a. Identifying the genetic diagnosis will allow us to tailor recommendations and treatment for their specific condition. If a chromosomal disorder is identified, medical literature will describe suggested health supervision guidelines specific to his disorder. It will allow us to know whether the previously identified medical issues are the only ones that need to be addressed or whether this is part of a syndrome where other systems need to be monitored throughout their life. In addition, it may spare the child further diagnostic tests and procedures that are unnecessary and may allow appropriate preventive counseling or therapy to minimize hospitalizations.

b. It will allow us to identify additional relatives who may be at risk for developing serious medical problems related to this condition.

c. Once we have insurance authorization, we will instruct the family to have his blood drawn for the chromosomal microarray here at the University of Michigan. We should see [Petitioner] back in our clinic if the

chromosomal microarray is not approved or if no pathogenic copy number variants are found in 1 year time. I think identifying if he has a genetic condition would be useful for him and his family members including older siblings who are soon going to be of reproductive age.

Exhibit A, pages 7-8

8. On November 11, 2016, Respondent sent written notice that the prior authorization request was denied because it did not meet criteria. (Exhibit A, pages 9-14).
9. On January 24, 2017, the Michigan Administrative Hearing System (MAHS) received the request for hearing filed in this matter. (Exhibit A, page 2).

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 MHPs and, as provided in the Medicaid Provider Manual (MPM), is responsible for providing services pursuant to its contract with the Department:

The Michigan Department of Health and Human Services (MDHHS) 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 MDHHS 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 Plans Chapter, page 1
(Emphasis added by ALJ)*

Pursuant to the above policy and its contract with the Department, the MHP has developed prior authorization requirements and utilization and management and review criteria.

In particular, as testified to by Respondent's witness and provided in its exhibit (Exhibit A, pages 15-24), Respondent's Medical Coverage Guidance with respect to genetic testing (MCG-051) provides that genetic testing may only be approved when (1) the test is ordered by a board certified physician within the scope of their practice or a board certified MD medical geneticist; (2) pre- and post- test genetic counseling is performed by a board-certified MD medical geneticist or certified genetic counselor; (3) documented key risk factors suggest a genetic disorder is present; (4) carrier or predictive testing documentation confirms that a causative genetic change has been identified in an affected family member; (5) documentation is provided that supports that test results will be used to significantly alter the management or treatment or the disease; and (6) the clinical testing laboratory is accredited.

Here, Respondent denied Petitioner's request pursuant to that policy. In support of the decision, its Medical Director testified that the request did not meet the applicable criteria because the testing was not looking for any particular disorder and any test results, whatever they were, would not change Petitioner's treatment. According to Respondent's Medical Director, the genetic testing would just give a name and possibly a diagnosis to Petitioner's condition, but that is not enough to meet the criteria when his treatment would remain the same.

In response, Petitioner's representative testified that they wanted the genetic testing in order to understand why Petitioner was so tall, growing so fast, and exhibiting certain behaviors. She also noted that, as both of Petitioner's parents were adopted, the testing could show Petitioner's family history. She further testified that the family and the doctors would be discussing the effect of Petitioner's test results on his treatment after the test results are received.

Petitioner bears the burden of proving by a preponderance of the evidence that Respondent erred in denying the prior authorization request. Moreover, the undersigned Administrative Law Judge reviews Respondent's decision in light of the information that was available at the time the decision was made.

Given the record and applicable policies in this case, Petitioner has failed to meet that burden of proof and Respondent's decision must be affirmed. The above policy expressly provides that, for genetic testing to be approved, the submitted information must include the indicators for a genetic disorder and documentation supporting that the test results will be used to significantly alter the management or treatment of the disease. Examples of such alterations in management or treatment of a disease include surgery; a change in surveillance; hormonal manipulation; or a change from standard therapeutic or adjuvant chemotherapy.

In this case, there is no specific documentation regarding the effect the genetic testing would have on Petitioner's treatment and, instead, the doctor merely discussed how useful the testing could be for Petitioner's relatives and stated that identifying the genetic diagnosis would allow the medical professionals treating Petitioner to tailor the recommendations and treatment to the specific condition. However, the usefulness of the testing for Petitioner's family is irrelevant and the vague and general statements about the effect of the testing for Petitioner are insufficient to meet the applicable criteria or to show how the results will be used to significantly alter the management or treatment of any disease. Accordingly the prior authorization request was properly denied.

To the extent that Petitioner's representative has new or updated information she wants to provide regarding the effect of any testing, she and Petitioner's doctor are free to submit a new prior authorization request at any time. However, regardless of what happens in the future, the denial at issue in this case must be affirmed given record in this case and 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 genetic testing.

IT IS, THEREFORE, ORDERED that:

The Respondent'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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