



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: September 24, 2020
MOAHR Docket No.: 20-005343
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 September 23, 2020. Petitioner appeared and testified on her own behalf. Wilma Martini, a Clinical Pharmacist with Magellan Medicaid Administration (MMA), appeared and testified on behalf of the Respondent Michigan Department of Health and Human Services (MDHHS or Department).

During the hearing, Respondent submitted one evidence packet that was admitted into the record as Exhibit A, pages 1-30. Petitioner did not submit any exhibits.

ISSUE

Did Respondent properly deny Petitioner's prior authorization request for the medication Vyvanse?

FINDINGS OF FACT

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

1. MMA contracts with the Department to review prior authorization requests for specified medications. (Testimony of Respondent's representative).
2. On June 15, 2020, MMA received a prior authorization request for the medication Vyvanse submitted on Petitioner's behalf by a Dr. Nicole Soos,

- a specialist in family practice. (Exhibit A, pages 5-8).¹
3. The prior authorization request and attached medical documentation indicated that Petitioner has been diagnosed with binge eating disorder. (Exhibit A, pages 5-8).
 4. The request and medical documentation did not indicate who had made or confirmed that diagnosis. (Exhibit A, pages 5-8).
 5. On June 16, 2020, MMA sent an electronic notice to Petitioner's doctor asking if the diagnosis of binge eating disorder had been confirmed by a psychologist or social worker and that, if so, could the doctor please submit documentation stating so. (Exhibit A, page 13).
 6. The electronic notice also stated that the diagnosis would require MDHHS review and that the doctor should submit all available documentation. (Exhibit A, page 13).
 7. That same day, Dr. Soos submitted additional information to MMA as requested. (Exhibit A, pages 9-12).
 8. However, the additional documentation did not provide any information regarding confirmation of Petitioner's diagnosis of binge eating disorder by a psychologist or social worker. (Exhibit A, pages 9-12).
 9. MMA then forwarded the request to the Department for a review by a Department physician. (Testimony of Respondent's representative).
 10. On June 17, 2020, a Dr. Jeanne Kapenga reviewed the request and determined that it should be denied because it did not meet criteria for approval. (Exhibit A, page 14).
 11. She also indicated that the request must include an evaluation from a psychiatrist, psychologist or social worker. (Exhibit A, page 14).
 12. MMA then sent Petitioner's doctor an electronic notice of denial. (Exhibit A, page 15).
 13. On June 18, 2020, MMA also sent Petitioner written notice that her prior authorization request for Vyvanse had been denied because it did not meet criteria. (Exhibit A, page 16).
 14. On August 21, 2020, the Michigan Administrative Hearing System (MAHS) received the request for hearing filed by Petitioner in this matter with respect to the denial of her request. (Exhibit A, page 2).

¹ The prior authorization request was sent in part to clarify an earlier request and identify what diagnosis the medication was being requested for. (Exhibit A, page 5).

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.

The Social Security Act § 1927(d), 42 USC 1396r-8(d), also provides as follows:

- (d) Limitations on Coverage of Drugs –
 - (1) Permissible Restrictions –
 - (A) A state may subject to Prior Authorization any covered outpatient drug. Any such Prior Authorization program shall comply with the requirements of paragraph (5).
 - (B) A state may exclude or otherwise restrict coverage of a covered outpatient drug if –
 - (i) the prescribed use is not for a medically accepted indication (as defined in subsection (k)(6);
 - (ii) the drug is contained in the list referred to in paragraph (2);
 - (iii) the drug is subject to such restriction pursuant to an agreement between a manufacturer and a State authorized by the Secretary under subsection (a)(1) or in effect pursuant to subsection (a)(4); or
 - (iv) the State has excluded coverage of the drug from its formulary in accordance with paragraph 4.
 - (2) List of drugs subject to restriction–The following drugs or classes of drugs, or their medical uses, may be excluded from coverage or otherwise restricted:
 - (A) Agents when used for anorexia, weight loss, or weight gain.

- (B) Agents when used to promote fertility.
- (C) Agents when used for cosmetic purposes or hair growth.
- (D) Agents when used for the symptomatic relief of cough and colds.
- (E) Agents when used to promote smoking cessation.
- (F) Prescription vitamins and mineral products, except prenatal vitamins and fluoride preparations.
- (G) Nonprescription drugs.
- (H) Covered outpatient drugs, which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee.
- (I) Barbiturates.
- (J) Benzodiazepines.
- (K) Agents when used for the treatment of sexual or erectile dysfunction, unless such agents are used to treat a condition, other than sexual or erectile dysfunction, for which the agents have been approved by the Food and Drug Administration.

* * *

- (4) Requirements for formularies — A State may establish a formulary if the formulary meets the following requirements:
 - (A) The formulary is developed by a committee consisting of physicians, pharmacists, and other appropriate individuals appointed by the Governor of the State (or, at the option of the

State, the State's drug use review board established under subsection (g)(3)).

- (B) Except as provided in subparagraph (C), the formulary includes the covered outpatient drugs of any manufacturer, which has entered into and complies with an agreement under subsection (a) (other than any drug excluded from coverage or otherwise restricted under paragraph (2)).
- (C) A covered outpatient drug may be excluded with respect to the treatment of a specific disease or condition for an identified population (if any) only if, based on the drug's labeling (or, in the case of a drug the prescribed use of which is not approved under the Federal Food, Drug, and Cosmetic Act but is a medically accepted indication, based on information from appropriate compendia described in subsection (k)(6)), the excluded drug does not have a significant, clinically meaningful therapeutic advantage in terms of safety, effectiveness, or clinical outcome of such treatment for such population over other drugs included in the formulary and there is a written explanation (available to the public) of the basis for the exclusion.
- (D) The state plan permits coverage of a drug excluded from the formulary (other than any drug excluded from coverage or otherwise restricted under paragraph (2)) pursuant to a Prior Authorization program that is consistent with paragraph (5),
- (E) The formulary meets such other requirements as the Secretary may impose to achieve program savings consistent with protecting the health of program beneficiaries.

A prior authorization program established by a State under paragraph (5) is not a formulary subject to the requirements of this paragraph.

- (5) Requirements of Prior Authorization programs—A State plan under this title may require, as a condition of coverage or payment for a covered outpatient drug for which Federal financial participation is available in accordance with this section, with respect to drugs dispensed on or after July 1, 1991, the approval of the drug before its dispensing for any medically accepted indication (as defined in subsection (k)(6)) only if the system providing for such approval –
- (A) Provides response by telephone or other telecommunication device within 24 hours of a request for prior authorization; and
 - (B) Except with respect to the drugs referred to in paragraph (2) provides for the dispensing of at least 72-hour supply of a covered outpatient prescription drug in an emergency situation (as defined by the Secretary).

Exhibit A, pages 22-24

The Department is therefore authorized by federal law to develop both a formulary of approved prescriptions and a prior authorization process.

It has done so and, with respect to requests for Vyvanse for binge eating disorder, the Michigan Medicaid Clinical and PDL Criteria at the time of the request in this case provided in part:

Binge eating disorder (Vyvanse): Not covered unless approved by MDHHS physician for appropriateness. If the requesting physician is not a psychiatrist, document whether or not a psychologist or social worker has confirmed the diagnosis. If so, request the documentation for state review. Document if MAPS report has been reviewed.

Exhibit A, page 20

Here, MMA received a request for Vyvanse submitted on Petitioner's behalf by her family doctor that indicated that Petitioner has a diagnosis of binge eating disorder, but that did not indicate whether a psychologist or social worker had confirmed the diagnosis.

Respondent's representative testified that, pursuant to the above criteria, the request could only be approved if it is approved by an MDHHS physician for appropriateness and that, if the request was not made by a psychiatrist, as is the case here, it must

document whether or not a psychologist or social worker has confirmed the diagnosis of binge eating disorder. She also testified that, after requesting and receiving additional information from Petitioner's doctor, MMA forwarded the request in this case on to the Department for a physician review and the physician reviewer subsequently determined that the request should be denied as the submitted documentation failed to demonstrate that Petitioner met the above criteria.

In response, Petitioner testified that her binge eating diagnosis was made or confirmed by a psychiatric nurse practitioner and that, after the denial was made in this case, she gave her psychiatric records to her doctor so that the doctor's office could forward them to MMA.

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

Given the available information and applicable policies in this case, Petitioner has failed to meet her burden of proof and the Respondent's decision must be affirmed. As discussed above, the Department has been authorized by federal law to develop both a formulary of approved prescriptions and a prior authorization process; it has done so; and, with respect to Vyvanse prescribed for binge eating disorder, it made any approval at the time of the request in this case subject to specific guidelines, including requirements that an MDHHS physician approve the drug for appropriateness and that, in cases where the requesting physician is not a psychiatrist, the request must document that a psychologist or social worker has confirmed the diagnosis. Here, given the documentation submitted by Petitioner's family doctor in support of the request, the record does not establish that a psychiatrist was making the prior authorization request or that Petitioner's diagnosis of binge eating disorder had been confirmed by a psychologist or social worker; and the MDHHS physician did not subsequently approve the drug for appropriateness. Accordingly, Respondent's decision must be affirmed.

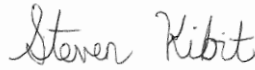
To the extent Petitioner has additional or updated information to provide regarding her need for Vyvanse, she and her doctor can always request the drug again in the future along with that information. With respect to the issue in this case however, Respondent's decision is affirmed given the information available at the time.

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:

Respondent's decision is **AFFIRMED**.



SK/sb

Steven Kibit
Administrative Law Judge
for Robert Gordon, 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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30763
Lansing, Michigan 48909-8139

DHHS -Dept Contact

Kathy Stiffler
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DHHS Department Rep.

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