



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: March 3, 2022
MOAHR Docket No.: 22-000028
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 upon the Petitioner's request for a hearing.

After due notice, a telephone hearing was held on February 9, 2022. Attorney Bridget Noonan appeared and testified on behalf of Petitioner, [REDACTED]. Tanya Lane, Senior Commercial Denial Specialist at Novocure Inc., also testified as a witness for Petitioner. Dr. Richard Sharon, Medical Director, appeared and testified on behalf of Molina Healthcare of Michigan, the Respondent Medicaid Health Plan (MHP).

ISSUE

Did Respondent properly deny Petitioner's prior authorization request for Optune?

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 [REDACTED] year-old Medicaid beneficiary who is enrolled in the Respondent MHP and who has been diagnosed with glioblastoma, a cancerous brain tumor. (Exhibit #1, page 25; Exhibit B, page 20; Testimony of Petitioner's representative).
2. On August 6, 2021, Respondent received a prior authorization request submitted on Petitioner's behalf by Novocure Inc. for Optune, a wearable device used for treating tumors with electrical stimulation. (Exhibit #1, pages 179-208; Exhibit D, pages 57-80).
3. In that request, Novocure Inc. used the Healthcare Common Procedure Coding System (HCPCS) code of E1399 for the requested device. (Testimony of Senior Commercial Denial Specialist at Novocure; Testimony of Respondent's representative).

4. E1399 is a miscellaneous durable medical equipment code that is only to be used when a more specific HCPCS Level II code is not available. (Exhibit D, pages 57-58; Exhibit E, page 61).
5. However, there is a more specific HCPCS code for electrical stimulation devices used for cancer treatment like Optune: E0766. (Exhibit E, page 57; Testimony of Senior Commercial Denial Specialist at Novocure; Testimony of Respondent's representative).
6. Accordingly, Respondent converted the identified code to E0766 when reviewing the request. (Testimony of Respondent's representative).
7. Respondent also searched the appropriate code in the Community Health Automated Medicaid Processing System (CHAMPS) and Medicaid Suppliers/Orthotists/Prosthetists/Durable Medical Equipment Dealers Fee Schedule used in Michigan Medicaid. (Testimony of Respondent's representative).
8. However, E0766 was not identified as a payable code in either. (Testimony of Senior Commercial Denial Specialist; Testimony of Respondent's representative).
9. Respondent did not review the prior authorization request for medical necessity. (Testimony of Respondent's representative).
10. On August 17, 2021, Respondent sent Petitioner written notice that the prior authorization request was denied. (Exhibit A, pages 62-67).
11. With respect to the reason for the denial, the notice stated:

The notes sent in show that you have the condition of glioblastoma. This is a type of cancer that affects the brain. A request was received for Optune, which is a device for treating tumors. This is not a covered benefit under your health plan. Electrical stimulation device used for cancer treatment is not a covered benefit. Therefore, this request is denied.

Decision based on Michigan Department of Health and Human Services, CHAMPS Database E0766 is not a covered benefit)

Exhibit A, page 62

12. On September 28, 2021, Petitioner, through her provider, filed an Internal Appeal with Respondent with respect to that denial. (Exhibit A, pages 55-

58).

13. On November 3, 2021, Respondent sent Petitioner written notice that her Internal Appeal was denied. (Exhibit #1, pages 11-12).
14. With respect to the reason for the denial the notice stated:

Upon review, the notes sent in show that you have the condition of glioblastoma. This is a type of cancer that affects the brain. A request was received for Optune, which is a device for treating tumors. CPT E1399 Electrical Stimulator Device and Transducer arrays is/are not a covered Michigan Medicaid benefit per the Michigan Department of Health and Human Services.

Therefore, the request for Optune is denied. This decision is based on **Michigan Department of Health and Human Services, CHAMPS Database** (CPT E0766 is not a covered benefit). This is our final adverse determination.

Exhibit #1, page 11

15. On January 4, 2022, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the request for hearing filed by Petitioner in this matter regarding Respondent's decision. (Exhibit #1, pages 1-306).

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 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, July 1, 2021 version
Medicaid Health Plan Chapter, page 1
(underline added for emphasis)*

Here, Respondent denied the prior authorization request pursuant to the above policy and on the basis that the requested device was not a covered benefit under Petitioner's Medicaid plan. Petitioner then appealed that decision.

In support of the denial, Respondent's representative testified that the denial was based purely on a benefits issue. He also testified that the prior authorization request identified the wrong HCPCS code, so Respondent converted it to the correct code; reviewed to see whether the equipment was covered under Michigan Medicaid; and discovered that it was not. He further testified that the request was not reviewed for medical necessity.

In response, Petitioner's representative testified regarding Petitioner's medical history and the rare, aggressive form of brain cancer that Petitioner suffers from. She also testified and argued that the requested service is supported by medical research and that Petitioner is an excellent candidate for an exception to the applicable policy given

Petitioner's age; her terminal illness; and the availability of a safe and effective treatment.

The Senior Commercial Denial Specialist at Novocure Inc. testified that Optune is considered standard care for treatment of glioblastoma; it is approved by the United States Food and Drug Administration (FDA); and that Petitioner began receiving it in July of 2020. She also testified that many insurance companies, including other Molina Healthcare plans, cover Optune for treatment of glioblastoma. She did agree that Respondent was correct to convert the HCPCS code identified in the prior authorization request. She also agreed that the correct code is non-covered on the Medicaid fee schedule.

Petitioner has 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 is limited to reviewing Respondent'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 not met her burden of proof and Respondent's decision must therefore be affirmed. Respondent is a MHP that, per policy, must operate consistently with all applicable published Medicaid coverage and limitation policies and there is nothing in the record indicating the requested device is covered here, with Respondent's representative credibly describing its findings; Petitioner's witness from the submitting provider agreeing with that testimony; and the irrelevancy of whether non-Medicaid plans or other states cover it. Moreover, while Petitioner's representative requests an exception based on Petitioner's particular circumstances, she did not identify any basis for such an exception in policy or law, and the undersigned Administrative Law Judge has not been delegated the authority to overrule or make exceptions to Michigan Department of Health and Human Services' policy.¹

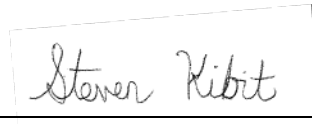
¹ See Delegation of Authority to MOAHR dated October 30, 2020.

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 authorization request.

IT IS, THEREFORE, ORDERED that:

Respondent's decision is **AFFIRMED**.

A rectangular box containing a handwritten signature in cursive script that reads "Steven Kibit".

SK/tem

Steven Kibit
Administrative Law Judge

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

Managed Care Plan Division
CCC, 7th Floor
Lansing, MI 48919
MDHHS-MCPD@michigan.gov

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