



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: January 13, 2023
MOAHR Docket No.: 22-005878
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Corey Arendt

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 January 11, 2023. [REDACTED] Petitioner's Mother and Guardian, appeared on behalf of Petitioner. Kristin Piotrowicz, Senior appeal Analyst, appeared and testified on behalf of Respondent, Priority Health (Department).

Exhibits

Petitioner	None
Department	A – Hearing Summary

ISSUE

Did Respondent properly deny Petitioner's request for Catapres patches?

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 Medicaid beneficiary who is enrolled with Department. (Exhibit A; Testimony).
2. On August 20, 2022, Department approved a one-time (month) supply of Catapres patches on an emergency fill purpose to treat a diagnosis of attention-deficit hyperactivity disorder. (Exhibit A; Testimony).
3. On September 23, 2022, Department approved a second one-time

(month) supply of Catapres patches. (Exhibit A; Testimony.)

4. On October 26, 2022, Department received from Petitioner a request for prior approval for Catapres patches. (Exhibit A; Testimony.)
5. On October 27, 2022, Department sent Petitioner a denial notice denying the October 26, 2022, request for Catapres patches. The notice indicated the following:

Catapres TTS patch with National Drug Code (NDC): 82089-0102-34 is an excluded NDC and is non-formulary. The manufacturer/labeler of this specific product does not participate in the Medicaid Drug Rebate Program (has not signed a Medicaid rebate agreement) and therefore this NDC will not be covered for Medicaid members. Your choices that are covered include, but are not limited to: clonidine transdermal patch, clonidine tablet, clonidine ER tablet, guanfacine, as well as drugs from other medication classes used to treat ADHD including amphetamine, dextroamphetamine, Adderall, Vyvance, etc. Because there are other drugs on the Michigan Medicaid Health Plan Common Formulary, and your prescriber has not demonstrated that these other drugs cannot be used, this request is not approved...¹

6. On November 10, 2022, Department received from Petitioner, an Internal Appeal Request. (Exhibit A; Testimony.)
7. On November 22, 2022, the Department's Level 2 Appeal Committee reviewed Petitioner's request and upheld the initial denial. (Exhibit A; Testimony.)
8. On November 23, 2022, Department sent Petitioner, a Level 2 Denial Decision. (Exhibit A; Testimony.)
9. On December 7, 2022, the Michigan Office of Administrative Hearings and Rules, received from Petitioner, a request for hearing.

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.

¹ Exhibit A, p 38.

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.²

As allowed by the above policy and its contract with the Department, the Department 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.

² MPM, Medicaid Health Plan, April 1, 2021, p 1.

Here, Department denied Petitioner's request because it was not a covered product and further, because it was not demonstrated that other covered alternatives could not be used.

In response, Petitioner's mother testified Petitioner could not use oral medications for various reasons and that the preferred clonidine patch was tried but had significant side effects.

The Department responded they were unaware of other medications not being applicable to Petitioner or that other options were tried and failed.

After reviewing the documentation provided by the Department, it appears the documentation does include various notes from Petitioner's physician indicating side effects from clonidine patch use and other discussion regarding Petitioner's inability to use medication in the pill form.³

Pursuant to both its contract and the MPM, Department is allowed to have a drug management program that includes a drug formulary 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.

Based upon the evidence reviewed, Petitioner has met their burden of proving by a preponderance of the evidence that the Department erred in denying her authorization request. The evidence does indicate other alternatives or preferred options are unavailable.

Given the above policy and evidence in this case, Petitioner has satisfied her burden of proof and Department's decision must be reversed.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, decides that Respondent improperly denied Petitioner's prior authorization request.

IT IS, THEREFORE, ORDERED that:

Department's decision is **REVERSED**.

The Department is ordered to initiate the reprocessing of Petitioner's prior authorization request for Catapres patches.

³ Exhibit A, pp 8-9, 17.

J. Arendt

CA/

Corey Arendt

Administrative Law Judge

for Elizabeth Hertel, 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

Via Electronic Mail:

DHHS Department Contact

MDHHS
CCC, 7th Floor
Lansing, MI 48919
MDHHS-MCPD@michigan.gov

DHHS Department Contact

MDHHS
Managed Care Plan Division
400 S. Pin St., 7th Floor
Lansing, MI 48933
MDHHS-MCPD@michigan.gov

Community Health Representative

Priority Health Choice
Kellie McCowan
1231 E. Beltline, NE
Grand Rapids, MI 49525-4501
Kellie.mccowan@priorityhealth.com

Authorized Hearing Representative

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

Via First Class Mail:

Petitioner

[REDACTED]
[REDACTED] MI [REDACTED]