



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
SUZANNE SONNEBORN
EXECUTIVE DIRECTOR

MARLON I. BROWN, DPA
ACTING DIRECTOR

Date Mailed: August 18, 2023
MOAHR Docket No.: 23-004174
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Robert J. Meade

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, 42 CFR 431.200 *et seq.* and 42 CFR 438.400 *et seq.* upon Petitioner's request for a hearing.

After due notice, a telephone hearing was held on August 17, 2023. Petitioner, [REDACTED] appeared and testified on her own behalf. Attorney, Mark Kopson, appeared on behalf of Aetna, the Respondent Medicaid Health Plan (Respondent or MHP). Michael Hammoud, Pharmacy Director; Laguirp Burke, Associate Manager, Grievance and Appeals; Dr. Sandy Gibson, Medical Director; Melissa Armstrong, Appeals Nurse; and Candice Dennis, Appeals Specialist, appeared as witnesses for the MHP.

ISSUE

Did the MHP properly deny Petitioner's prior authorization request for Ozempic?

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 in Respondent's MHP. (Exhibit 1; Testimony)
2. On May 11, 2023, Petitioner's physician submitted a prior authorization request for Ozempic. (Exhibit 1; Testimony)
3. On May 11, 2023, Respondent sent Petitioner a Notice of Adverse Benefit Determination because the prior authorization request did not meet the criteria for coverage. Specifically, the Notice indicated, "The health plan

will not approve the request. You have type 2 diabetes. This is not a preferred drug for your health plan. You must try one of the preferred drugs first. Some of the preferred drugs are Byetta, Trulicity, and Victoza.” (Exhibit 1; Testimony)

4. On June 21, 2023, Petitioner requested an internal appeal. (Exhibit 2; Testimony)
5. On July 20, 2023, Respondent denied Petitioner’s internal appeal, again reiterating that policy required Petitioner to try one of the preferred drugs before being prescribed Ozempic. (Exhibit 2; Testimony)
6. On July 27, 2023, the Michigan Office of Administrative Hearings and Rules (MOAHR) received Petitioner’s request for hearing. (Exhibit 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 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 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.

*Medicaid Provider Manual
Medicaid Health Plan Chapter
April 1, 2023, p 1
Emphasis added*

Pursuant to the above policy and its contract with the Department, the MHP has developed a prior authorization process subject to the limitations and restrictions described in the MHP's Medicaid agreement, the MPM, Medicaid bulletins, and other directives.

With regard to Ozempic, the Michigan Medicaid Clinical and Preferred Drug List (PDL) Criteria indicate:

CRITERIA TO APPROVE

- Diagnosis of type 2 diabetes; AND
- Allergy to the preferred medications; OR
- Contraindication or drug to drug interaction with the preferred medications; OR
- History of unacceptable side effects; OR
- Trial and failure with one preferred medication within same subgroup.

(Exhibit 4)

Respondent's Pharmacy Director testified that Petitioner's request for Ozempic was denied for failure to meet the coverage criteria. Respondent's Pharmacy Director indicated that while Petitioner is diagnosed with diabetes, she has not met any of the other coverage criteria. Respondent's Pharmacy Director testified that he reviewed

Petitioner's records and did not see that she had tried any of the preferred medications, namely Byetta, Trulicity, and Victoza.

Respondent's Medical Director testified that she denied Petitioner's internal appeal for the same reason.

Petitioner asked why Ozempic was not the preferred medication. Respondent's Pharmacy Director indicated that the PDL is determined by the Michigan Department of Health and Human Services (MDHHS), and he could not speak to how drugs were listed. Respondent's Pharmacy Director did indicate that per its contract with MDHHS though, the MHP must follow the PDL and coverage criteria for medications.

Petitioner testified that she has tried four or five different medications for her diabetes, but none of them have worked. Petitioner indicated that she could not understand why she cannot take the drug she wants to take instead of one of the others. Petitioner testified that she did mention to her doctor the weight loss properties of Ozempic but indicated that was not the only reason she wanted to take it. Petitioner admitted that she has not tried any of the preferred medications.

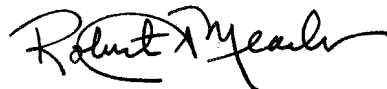
Given the above policy and evidence, Petitioner has failed to prove by a preponderance of the evidence that the MHP erred in denying the prior authorization request. Policy clearly indicates that Respondent is authorized to develop prior authorization requirements and policies that are consistent with Medicaid policy. Here, the policy requiring the trial of preferred drugs is consistent with Medicaid policy; and the undersigned has no authority to ignore clear policy. While the undersigned is sympathetic to Petitioner's position, he has no authority to grant Petitioner any relief in this matter.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the MHP properly denied Petitioner's request for prior authorization for Ozempic.

IT IS THEREFORE ORDERED that:

The Medicaid Health Plan's decision is **AFFIRMED**.



RM/pe

Robert J. Meade
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

Via Electronic Mail:

Community Health Representative

Aetna Better Health of Michigan
Grievances and Appeals - Aetna Better Health of MI
28588 Northwestern Hwy., Ste. 380B
Southfield, MI 48034
MIAppealsandGrievances@aetna.com

Counsel for Respondent

Mark S. Kopson
Plunkett Cooney
38505 Woodward Ave.
Bloomfield Hills, MI 48304
Mkopson@plunkettcooney.com

DHHS Department Contact

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

Via First Class Mail:

Petitioner

[REDACTED]
[REDACTED] MI [REDACTED]