

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: February 21, 2020  
MOAHR Docket No.: 19-012259  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Colleen Lack**

**DECISION AND ORDER**

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 *et seq*; 42 CFR 438.400 *et seq*; and Mich Admin Code, R 792.11002.

After due notice, a hearing was held on January 15, 2020. Kyle Debruycker, Attorney, represented the Petitioner. [REDACTED], the Petitioner appeared and testified. The Department of Health and Human Services contracted Medicaid Health Plan (MHP), Meridian Health Plan of Michigan, was represented by Andrew Starr, Pharmacist.

During the hearing proceeding, the MHP's hearing summary packet was admitted as Exhibit A, pp. 1-157.

**ISSUE**

Did the Medicaid Health Plan properly deny Petitioner's request for Rectiv 0.4% Ointment?

**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 enrolled in the MHP.
2. On or about November 8, 2019, the MHP received a prior authorization request for Rectiv 0.4% Ointment for Petitioner for a diagnosis of anal fissure. (Exhibit A, pp. 7-21)

3. On the prior authorization request form, the prescriber stated that Petitioner has attempted to use all formulary medications, which have only worsened the condition. (Exhibit A, p. 7)
4. On November 8, 2019, the MHP sent a letter to the Petitioner and his doctor stating that the request for Rectiv 0.4% Ointment was denied because it did not meet coverage criteria. Rectiv 0.4% Ointment is not a covered benefit on the MHP's 2019 formulary. Petitioner was advised to discuss with his physician an alternative medication on the formulary. The MHP noted they will review for compounded nitroglycerin with prior authorization or cover hydrocortisone 2.5% cream without prior authorization. (Exhibit A, pp. 22-31)
5. On November 8, 2019, the MHP received a reconsideration request with additional documentation. (Exhibit A, pp. 6 and 32-129)
6. On November 11, 2019, the MHP denied the reconsideration request. (Exhibit A, p. 130)
7. On November 15, 2019, the MHP received an Internal Appeal from Petitioner. (Exhibit A, pp. 6 and 131-144)
8. On November 15, 2019, the MHP issued a Notice of Appeal Decision stating the request for Rectiv 0.4% Ointment did not meet coverage criteria and remained denied. It was stated that there was no evidence that the request meets the criteria for a formulary exception, including trial and failure of all formulary alternatives. A clinically adequate trial and therapeutic failure of all formulary alternatives is required prior to review for coverage of the non-formulary medication. The MHP will cover diltiazem without prior authorization. (Exhibit A, pp. 145-152)
9. Petitioner's hearing request was received by the Michigan Office of Administrative Hearings and Rules (MOAHR) on November 25, 2019. (Exhibit A, pp. 2-5)

### **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 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, October 1, 2019, version  
Medicaid Health Plans Chapter, p. 1*

The introduction portion of the Michigan Department of Health and Human Services Medicaid Health Plan Common Formulary (MHP Common Formulary) states:

In order to streamline drug coverage policies for Medicaid and Healthy Michigan Plan members and providers, the Michigan Department of Health and Human Services (MDHHS) has created a formulary that is common across all contracted Medicaid Health Plans (MHPs) for the current Comprehensive Health Plan Contract. The development of the Common Formulary is required under Section 1806 of Public Act 84 of 2015.

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Medicaid Health Plans May Be Less Restrictive

As part of the Common Formulary, minimum requirements will be established for drug utilization management policies such as quantity limits, age and gender edits, prior authorization criteria and step therapies. MHPs may be less restrictive, but not more restrictive, than the coverage parameters of the Common Formulary.

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Non-Formulary Prior Authorization Requests

**For any drug that is not on the Common Formulary but is on the Michigan Pharmaceutical Product List (MPPL), providers can request a NonFormulary Prior Authorization from the Health Plan. (see more below regarding MPPL).** Prescribers can use the standard prior authorization form referenced above to request any non-formulary prior authorization.

Michigan Pharmaceutical Product List

As a reminder, with the exception of products that are carved out, MHPs must have a process to approve provider requests for any prescribed medically appropriate product identified on the Medicaid Pharmaceutical Product List (MPPL), found at [Michigan.fhsc.com](http://Michigan.fhsc.com) >> Providers >> Drug Information >> MPPL and Coverage Information. Products that are listed on the MPPL but are not listed on the MHP Common Formulary are available for coverage consideration through a non-formulary prior authorization process.

MDHHS Medicaid Health Plan  
Common Formulary,  
effective January 1, 2020<sup>1</sup>, pp. 2-3

A search of the January 1, 2020, version of the MHP Common Formulary indicates that Rectiv is not listed. A search of the current version of the MMPL indicates Rectiv has been listed since October 16, 2012. Accordingly, the MHP properly reviewed Petitioner's request through a non-formulary prior authorization process.

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<sup>1</sup> Only the current version of the MHP Common Formulary is available online, no evidence of the version of the MHP Common Formulary in effect at the time of Petitioner's prior authorization request was submitted into the hearing record.

The MHP's Pharmacist explained that the documentation submitted was not sufficient to show that there had been an adequate trial and failure with all formulary alternatives. The formulary alternatives include nifedipine and diltiazem, which can be compounded into a gel or cream. The MHP indicated these would be first line alternatives to Rectiv for this particular diagnosis. The documentation submitted for Petitioner's request for Rectiv showed other alternatives had been tried, but it did not show that these alternative medications (nifedipine and diltiazem) had been tried or failed. When asked about the MHP denying a request for nifedipine, the Pharmacist stated there was no record of a prior authorization request for that medication. (Pharmacist Testimony; MHP Common Formulary)

Petitioner's attorney asserted that all formulary alternatives have been tried. Petitioner tried the two alternatives previously suggested hydrocortisone 1% cream and hydrocortisone 2.5% cream, but they did not work. (See Exhibit A, p. 156) Petitioner's physician and specialist recommended Rectiv. It was asserted that at one point the MHP recommended nifedipine, but after a big mix up, the MHP was unable to cover it.

Petitioner testified that when he was denied Rectiv, he called the pharmacy. Petitioner remembered them saying that one [nifedipine] was covered. However, when he went to the drug store to get it, they did not cover it. It was like that for six to seven medications over a six to eight week time period. Petitioner tried seven or eight medications over two years. Then it got to a point where surgery was needed to fix the problem. Petitioner gave up and charged the Rectiv to a credit card to be able to use this medication until his surgery in early December 2019. Petitioner was only looking for something that would work until he could have the surgery. Petitioner had used Rectiv in the past, around July 2019, and it worked for him. At that time, Petitioner had regular Medicaid and was not enrolled in the MHP. (Petitioner Testimony)

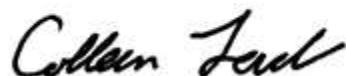
Petitioner bears the burden of proving by a preponderance of the evidence that the MHP erred in denying his request for Rectiv. While this ALJ sympathizes with the Petitioner's circumstances, the denial of the prior authorization request for Rectiv must be upheld based on the information available to the MHP at that time. The MHP provided sufficient credible evidence that the available information did not establish that the criteria was met, specifically the documentation that Petitioner had tried and failed all formulary alternatives. The medical records document trial of multiple medications and treatments for hemorrhoids and anal fissures, such as lidocaine, hydrocortisone, anusol, Preparation H, stool softener, proctofoam, and proctosol. (Exhibit A, pp. 10-21 and 32- 97) However, the records did not show trial of (or contraindication to) nifedipine and diltiazem, which are included on the MHP Common Formulary. Accordingly, the undersigned Administrative Law Judge finds that Petitioner has failed to meet his burden of proof and that the MHP's denial of the November 8, 2019, request for Rectiv 0.4% ointment must therefore be affirmed.

**DECISION AND ORDER**

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, decides that the Medicaid Health Plan properly denied the June 11, 2019, prior authorization request for Rectiv 0.4% ointment based on the information available at that time.

**IT IS, THEREFORE, ORDERED** that:

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



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CL/dh

**Colleen Lack**  
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**

Managed Care Plan Division  
CCC, 7th Floor  
Lansing, MI 48919

**Authorized Hearing Rep.**

Kyle A DeBruycker  
53541 8 Mile Road  
Northville, MI 48167

**Community Health Rep**

Meridian Health Plan of Michigan Inc.  
Appeals Section  
PO Box 44287  
Detroit, MI 48244

**Petitioner**

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