

GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: September 21, 2020
MOAHR Docket No.: 20-005198
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 42 CFR 431.200 *et seq.*, upon the Petitioner's request for a hearing.

After due notice, a telephone hearing was held on September 15, 2020. Petitioner appeared on her own behalf and offered testimony. Jamar Johnson, Lead Appeals and Grievances, appeared on behalf of Respondent, Molina Healthcare (Department). Dr. Keith Tarter, Chief Medical Director for Department, appeared as a witness. Joyce Williams, Trainee, observed the proceeding.

Exhibits:

Petitioner None

Department A – Hearing Summary

ISSUE

Did the Department properly deny Petitioner's prior authorization request for Pain Injections?

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, born [REDACTED] 1965. (Exhibit A; Testimony.)
2. On July 21, 2020, the Department received a prior authorization request from Petitioner's provider for Pain Injections. (Exhibit A; Testimony.)
3. The medical records provided with the request indicated Petitioner began

suffering from back pain on June 8, 2020. (Exhibit A; Testimony.)

4. On July 22, 2020, the Department sent Petitioner written notice that the prior authorization request was denied. The notice specifically stated:

The notes sent in show that you have a low back condition. The notes show that you have low back pain that radiates to your lower limbs. A request for pain injections was made for you. In order to be approved, your condition must meet criteria.

The notes do not show that you have tried and failed conservative treatment within the last 3 months. This includes 10-12 physical therapy visits. The notes do not explain why you are unable to do physical therapy. Physical therapy is now available. The notes do not show that your condition meets criteria. (Exhibit A.)

5. On July 31, 2020, the Department received from Petitioner an appeal of the July 22, 2020 denial decision. (Exhibit A.)
6. On August 3, 2020, the Department sent Petitioner written notice affirming the July 22, 2020 decision. The notice specifically stated:

Upon review, the request for 62323-NJX DX/THER SBST INTRLMNR LMBR/SAC W/IMG GDN x 2 has been denied. The request did not meet the Molina MCR-032 criteria. The notes showed that you have a low back condition.

- The notes did not show that you have tried and failed conservative treatment within the last 3 months, which included 10-12 physical therapy visits.
 - The notes did not explain why you were unable to do physical therapy.
7. On August 14, 2020, the Michigan Office of Administrative Hearings and Rules (MOAHR) received Petitioner's 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 statutes, 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.¹

Pursuant to the above policy and its contract with the Department, the MHP has developed criteria for its covered services that are subject to the limitations and restrictions described in the MHP's Medicaid agreement, the MPM, Medicaid bulletins, and other directives.

Regarding Pain Injections, Petitioner's guideline MCR-032 provides in relevant part:

¹ Medicaid Provider Manual, Medicaid Health Plan, January 1, 2020, p 1.

1. Initial or Diagnostic injection:

- The patient has radicular pain with demonstrable correlation on physical exam and/or imaging due to one of the following conditions: [ONE]
 - Chronic back pain present for a minimum of 3 months; or
 - Post-surgical back pain (i.e. post laminectomy syndrome) due to prior surgery (i.e. lumbar discectomy, laminectomy, or spinal fusion) and at least 6 months have elapsed since surgery; and
- Pain is affecting activity of daily living functional ability:>4 on the NRS Pain Rating Scale*;

AND

- Has tried and failed conservative therapy (i.e. for the current episode of pain (within the last 3 months) that includes: [ALL]
 - Physical therapy (PT) a minimum of 4 weeks (304x per week for a total of 12 sessions); or
 - There must be documentation submitted that explains why physical therapy is contraindicated:

**Note:* PT may be contraindicated if any of the following are present:

- Pain worsened with PT;
- PT tried but was not able to be tolerated....²

In this case, the denial of the prior authorization request was because the information provided did not show that conservative treatment was tried and failed or explain why conservative treatment could not take place.

Although a letter was provided indicating physical therapy could not be performed due to COVID-19, and the closure of pain clinics, at the time of the request, pain clinics were open.

Petitioner testified that she understood why the decision was made and attributed the denial to a lack of communication on the part of her treating physicians.

² Exhibit A.

Given the above policy and evidence, Petitioner has failed to prove by a preponderance of the evidence that the Department erred in denying the prior authorization request. Here, records submitted with Petitioner's prior authorization request do not meet the applicable approval criteria.

Based on the information submitted, the Department's decision was proper and must be upheld.

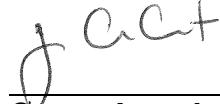
DECISION AND ORDER

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

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

CA/dh



Corey Arendt

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

Petitioner

[REDACTED]
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Community Health Rep

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