



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: January 28, 2021
MOAHR Docket No.: 20-007678
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 January 27, 2021. Petitioner appeared on her own behalf. Lisa Johnson, Lead Specialist, Grievance & Appeals, appeared and testified on behalf of Molina Healthcare, the Respondent Medicaid Health Plan (MHP). Dr. Keith Tarter, Senior Medical Director, appeared as a witness for the MHP.

ISSUE

Did the MHP properly deny Petitioner's prior authorization request for a spinal cord stimulator implant?

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, born [REDACTED] 1956, who is enrolled in the Respondent MHP. Petitioner has been diagnosed with spondylosis without myelopathy or radiculopathy, cervical region; spinal stenosis, lumbar region without neurogenic claud; aortic aneurysm without rupture; diabetes; hepatitis C; frequent urination; numbness, back pain, hypertension, arthritis; and obesity. (Exhibit A, pp 6, 8, 13; Testimony)
2. On October 6, 2020, Petitioner's provider submitted a prior authorization request on Petitioner's behalf for the approval of a spinal cord stimulator implant. (Exhibit A, pp 6-27; Testimony)

3. On October 12, 2020, the MHP sent Petitioner and his provider written notice that the prior authorization request for a spinal cord stimulator implant was denied. Specifically, the notice indicated:

The notes sent in show that you have back pain. A request was received for a Spinal Cord Stimulator. This is an implanted device that sends mild electric current to the spine to relieve pain. This request does not meet criteria. The notes do not show that you have spinal stenosis (narrowing of the spinal canal) of the lower spine and leg pain. The notes do not show that you have failed back surgery syndrome. The notes do not show that you have complex regional pain syndrome (chronic pain greater than would be expected from the injury that causes it). The notes do not show that you have painful diabetic neuropathy (a type of nerve damage that can occur with diabetes). And, the notes do not show that you have uncontrolled chest pain (Canadian Class III or IV). Therefore, the Spinal Cord Stimulator is denied.

Criteria used: InterQual 2020 CP: Procedures, Spinal Cord Stimulator (SCS) Insertion Subset

(Exhibit A, pp 70-76; Testimony)

4. On November 15, 2020, Petitioner filed an Internal Appeal and the MHP upheld the denial on November 30, 2020. (Exhibit A, p 1; Testimony)
5. On December 15, 2020, the Michigan Office of Administrative Hearings and Rules (MOAHR) received Petitioner's request for hearing regarding the spinal cord stimulator implant. (Exhibit A, pp 2-5; Testimony)

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:

SECTION 1 – GENERAL INFORMATION

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.

1.3 SERVICES THAT MHPS ARE PROHIBITED FROM COVERING

- Experimental/Investigational drugs, procedures or equipment;

*Medicaid Provider Manual
Medicaid Health Plan Chapter
October 1, 2020, pp 1, 4
(Emphasis added)*

Pursuant to the above policy and its contract with the Department, the MHP has developed prior authorization requirements and utilization management and review criteria. With regard to spinal cord stimulator implants, the MHP relies on InterQual criteria, which indicates that the patient must suffer from one of the following conditions before a spinal cord stimulator will be covered:

- Complex regional pain syndrome (CRPS)
- Failed back surgery syndrome
- Painful diabetic neuropathy
- Refractory Canadian Class III or IV angina

(Exhibit A, pp 77-82)

Pursuant to the above policies, the MHP denied Petitioner's prior authorization request for a spinal cord stimulator implant. The MHP's witness explained that the spinal cord stimulator implant was denied per the above policy because Petitioner does not have one of the above listed diagnosis. The MHP's witness indicated that Petitioner suffers from low back pain.

Petitioner testified that his main reason for appealing was because the original notice of denial he received indicated that he did not have spinal stenosis, which is one of his conditions. Petitioner indicated that he sees now that spinal stenosis is not one of the criteria for coverage and further indicated that him not having spinal stenosis was not listed as one of the reasons for denial on the second denial notice he received from the MHP.

Petitioner bears the burden of proving by a preponderance of the evidence that the MHP erred in denying his request. Based on the evidence presented, the undersigned Administrative Law Judge finds that Petitioner has failed to meet his burden of proof and that the MHP's decision must therefore be affirmed. The MHP is permitted by Department policy and its contract to develop review criteria; it has done so; and, pursuant to the applicable review criteria, the requested spinal cord stimulator implant is not covered for Petitioner because Petitioner lacks one of the above qualifying diagnoses. And, while the first notice sent to Petitioner did indicate that the spinal cord stimulator was denied because he did not have spinal stenosis, the MHP corrected this error or typo in the second notice. Clearly, spinal stenosis is not one of the criteria listed in the above InterQual criteria. As such, the use of a spinal cord stimulator in Petitioner's case would amount to an experimental or investigative procedure, which the MHP is prohibited from covering. While the undersigned can certainly empathize with Petitioner's situation, the undersigned has no equitable authority and cannot ignore clear policy. As such, the MHP's decision must be affirmed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the MHP properly denied the prior authorization request for a spinal cord stimulator implant.

IT IS THEREFORE ORDERED that:

The Medicaid Health Plan's decision is AFFIRMED.



RM/sb

Robert J. Meade
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

DHHS -Dept Contact

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

Petitioner

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