

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: September 10, 2021
MOAHR Docket No.: 21-003736
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Steven Kibit

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 September 9, 2021. Petitioner appeared and testified on her own behalf. [REDACTED], Petitioner's Aide, also assisted Petitioner during the hearing and testified on her behalf. Adam Herrman, Pharmacist, appeared and testified on behalf of MeridianHealth, the Respondent Medicaid Health Plan (MHP).

During the hearing, Respondent submitted an evidence packet that was admitted into the record as Exhibit A, pages 1-45. Petitioner did not submit any exhibits.

ISSUE

Did Respondent properly deny Petitioner's request for Budesonide EC 3 MG Capsules?

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] ([REDACTED]) year-old Medicaid beneficiary who is enrolled in the Respondent MHP. (Exhibit A, page 6; Testimony of Respondent's representative).
2. On June 16, 2021, Respondent received a prior authorization request for Budesonide EC 3 MG Capsules submitted on Petitioner's behalf by her doctor. (Exhibit A, page 6).
3. The prior authorization request indicated that Petitioner has been

diagnosed with Crohn's Disease and needs the medication. (Exhibit A, page 6).

4. That same day, Respondent sent Petitioner written notice that the prior authorization request had been denied. (Exhibit A, pages 7-16).
5. With respect to the reason for the denial, the notice stated:

MeridianRx has reviewed this request and determined that it does not meet MeridianHealth coverage criteria. BUDESONIDE EC 3 MG CAPSULE is not a covered benefit on the 2021 MeridianHealth Medicaid Formulary (MeridianHealth list of covered drugs). Please discuss with your physician an alternative medication on the MeridianHealth Formulary. MeridianHealth will cover prednisone tablet without prior authorization. You or your physician may access the entire MeridianHealth Formulary online at www.mhplan.com. You may also request a copy of the MeridianHealth Formulary by calling MeridianHealth Member Services department at 1-888-437-0606.

Exhibit A, page 8

6. On June 21, 2021, Petitioner filed an Internal Appeal with Respondent regarding that decision. (Exhibit A, pages 17-28).
7. Petitioner's appeal indicated that her doctor told her the medication was needed, but it did not address if any formulary medications, including prednisone, had been tried. (Exhibit A, pages 17-28).
8. On July 15, 2021, Respondent sent Petitioner written notice that her Internal Appeal was denied. (Exhibit A, pages 29-40).
9. With respect to the reason for the denial, the notice stated:

We denied your Internal Appeal for the service/item listed above because: A MeridianHealth Physician Board Certified in Internal Medicine has reviewed all documentation submitted with this request and determined that it does not meet the MeridianHealth coverage criteria and remains denied. The reason for denial is that there is no

submission of the following for review: documentation of an adequate trial and therapeutic failure of all formulary alternatives. The documentation provided for review does not show that you have met the criteria for approval at this time. MeridianHealth will cover Prednisone, as well as other formulary alternatives without prior authorization. Please discuss your plan of care with your physician.

Source of criteria: MeridianHealth Policy M50.04 Request for exceptions to the formulary

The reviewer was not involved in the original decision. Meridian is keeping the first denial decision after this review.

Exhibit A, page 30

10. On August 10, 2021, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the request for hearing filed by Petitioner in this matter regarding Respondent's decision. (Exhibit A, pages 1-3).

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 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, April 1, 2021 version
Medicaid Health Plan Chapter, page 1
(Underline added for emphasis)*

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

Here, Respondent denied Petitioner's request pursuant to its formulary policy and on the basis that the requested Budesonide EC 3 MG Capsules are non-formulary, and that Petitioner has failed to show that all of the formulary alternatives, specifically Prednisone, have been tried without success or cannot be tried.

In response, Petitioner and her Aide testified that Petitioner's doctor has told her that he does not want her on Prednisone, but that he has not put that in writing, and it can be difficult for her to get doctors to complete necessary forms.

Petitioner has the burden of proving by a preponderance of the evidence that the MHP erred in denying her authorization request. Moreover, the undersigned Administrative Law Judge is limited to reviewing Respondent's decision in light of the information that was available at the time the decision was made.

Given the above policy and evidence in this case, Petitioner has failed to satisfy her burden of proof and Respondent's decision must be affirmed.

Pursuant to both its contract and the MPM, Respondent is allowed to have a drug management program that includes a drug formulary and 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. Those are the guidelines used by Respondent in this case and Petitioner has not shown that the specific formulary alternative identified by Respondent in the notice of denial, *i.e.*, Prednisone, has been tried and failed. Moreover, while Petitioner testified that her doctor advised her that he does not want her on Prednisone, the doctor never indicated that in the prior authorization request or any medical records, and Respondent properly denied the request given the information it did have.

To the extent Petitioner has additional or updated information regarding why Prednisone cannot be used in this case or has been tried and failed, she and her doctor can always submit a new authorization request with that additional information. With respect to the issue in this case however, Respondent's decision must be affirmed given the available information.

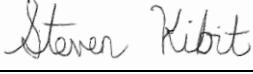
DECISION AND ORDER

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

IT IS, THEREFORE, ORDERED that:

Respondent's decision is **AFFIRMED**.

SK/sb


Steven Kibit
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

DHHS -Dept Contact

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

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Community Health Rep

Meridian Health Plan of Michigan Inc.
Kaitlynn Schwab
1 Campus Martius, Suite 700
Detroit, MI
48244
Kaitlynn.schwab@mhplan.com