

GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR



Date Mailed: October 15, 2021  
MOAHR Docket No.: 21-004154  
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 upon the Petitioner's request for a hearing.

After due notice, a telephone hearing was held on October 12, 2021. Petitioner appeared and testified on her own behalf. Rachael Prusi, Director of Pharmacy, appeared and testified on behalf of Upper Peninsula Health Plan (Department).

**Exhibits**

Petitioner	None
Department	A – Hearing Summary B – Miscellaneous Documents

**ISSUE**

Did Respondent properly deny Petitioner's request for Ketamine oral compound?

**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 the Department. (Exhibit A, page 1; Testimony).
2. On August 5, 2021, Department received a prior authorization request for Ketamine 100mg troche; ½ troche (50mg) two times a week on Sunday and Thursday, submitted on Petitioner's behalf by her doctor. (Exhibit A, page 1, 3-4; Testimony).

3. The prior authorization request indicated that Petitioner suffers from chronic pain syndrome. (Exhibit A, page 3).
4. On August 5, 2021, the Department sent Petitioner a Notice of Adverse Benefit Determination. The notice indicated the drug being requested (ketamine powder) was not a covered benefit and excluded from coverage. (Exhibit A, pp 6-9; Testimony).
5. On August 6, 2021, Petitioner called the Department and requested an appeal of the August 5, 2021, determination. (Exhibit A, pp 1, 16; Testimony.)
6. On or around August 13, 2021, the Department requested additional information regarding the prior approval request. (Exhibit A, p 1; Testimony.)
7. On or around August 13, 2021, the Petitioner's provider provided the Department with a list of other medications that were tried but failed to achieve their intended result of relieving Petitioner of pain. (Exhibit A, pp 1, 17; Testimony.)
8. On August 24, 2021, the Department sent Petitioner a Notice of Internal Appeal Decision. The notice indicated Petitioner's appeal was thoroughly considered but denied due to Ketamine not being a covered product. (Exhibit A, pp 1, 19-21; Testimony.)
9. Following the August 24, 2021, Notice of Internal Appeal Decision, the Michigan Office of Administrative Hearings and Rules, received from Petitioner, a request for hearing.
10. Ketamine is not FDA approved for oral administration and is not on the Michigan PDL. (Testimony; Exhibit B.)

### **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.<sup>1</sup>

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 drug Ketamine was not a covered product.<sup>2</sup> Ketamine is not FDA approved for oral administration or found on the Michigan PDL as a covered product.

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<sup>1</sup> MPM, Medicaid Health Plan, April 1, 2021, p 1.

<sup>2</sup> Effective August 1, 2020, the Michigan Department of Health and Human Services (MDHHS) Policy Bulletin 20-51 requires Medicaid Health Plans like Department to follow the Michigan PDL used by the fee-for-service pharmacy program.

In response, Petitioner testified she has been in pain for a long time and that Ketamine is the only drug that alleviates her pain. Petitioner went on to indicate that many other drugs have been tried but failed.

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, Department 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.

To the extent Petitioner has additional or updated information regarding Ketamine, its commercial availability, and studies to show its off-label use, 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:

Department's decision is **AFFIRMED**.

CA/dh

*J. Arendt*  
Corey Arendt  
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

**Petitioner**

[REDACTED]  
[REDACTED]  
[REDACTED] MI [REDACTED]

**Contractor Rep**

Upper Peninsula Health Plan  
853 W. Washington St  
Marquette, MI 49855