[redacted]
[redacted], MI [redacted]

Date Mailed: March 7, 2022
MOAHR Docket No.: 22-000103
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 February 16, 2022. Dr. Shawn Achtman, D.O., appeared and testified on Petitioner's behalf. Petitioner also testified as a witness on her own behalf. Katie Feher, Senior Manager of Operations, appeared and testified on behalf of MeridianHealth, the Respondent Medicaid Health Plan (MHP). Dr. Maria Hayes, Medical Director, also testified as a witness for Respondent.

During the hearing, Respondent submitted an evidence packet that was admitted into the record as Exhibit A, pages 1 -107. Petitioner did not submit any exhibits.

ISSUE

Did Respondent properly deny Petitioner's request for pain management 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 [redacted] year-old Medicaid beneficiary who is enrolled in the Respondent MHP. (Exhibit A, page 11; Testimony of Respondent's representative).

2. On September 29, 2021, Respondent received a prior authorization request for pain management injections submitted on Petitioner's behalf by her doctor. (Exhibit A, pages 8-53).

3. The supporting medical documentation submitted along with that request indicated that Petitioner has been diagnosed with lumbar radiculopathy and chronic low back pain, with symptoms beginning two years prior and without an inciting event. (Exhibit A, pages 11, 13, 15).

4. The supporting documentation also indicated that:

> Treatment over time has included OP PT x 3 with lumbar traction (traction improves pain but does not last), Gabapentin 100 mg qam and 300 mg qhs, Vitamin D3 and Vitamin B12. She has not had any injections in the past.

Exhibit A, page 11

5. The supporting documentation further indicated that Petitioner "has gone through 3 rounds of OP PT. The only modality that has been beneficial is lumbar traction but the symptom relief does not last." (Exhibit A, page 14).

6. On October 4, 2021, Respondent sent Petitioner written notice that the prior authorization request had been denied. (Exhibit A, pages 54-63).

7. With respect to the reason for the denial, the notice stated:

> Your doctor's request for a(n) Lumbar/Sacral Facet Joint Block (Lower Back Injection (Shot)) has been denied.
>
> - NIA Clinical Guideline 301 for Facet Injections or Blocks was used to make this decision.
> - This decision was based on the notes that were sent: back pain.
> - Before we can approve, we need the following notes: notes from your doctor that say for at least six weeks in the last six months, you did back exercises or stretches (formal physical therapy, chiropractic treatments, or supervised home exercise program). Your doctor can give a medical reason you can't exercise. We asked for this information but it was not given to us.
> - It is suggested that you follow up with your doctor for the next step in your care.

Exhibit A, page 55

8. On October 6, 2021, Petitioner filed an Internal Appeal with Respondent regarding that decision. (Exhibit A, pages 64-88).

9. Along with that request, Petitioner's doctor submitted a letter stating in part:

> Over the last couple of years, [Petitioner] has tried to treat her symptoms conservatively without success. Treatment thus far has included physical therapy (lumbar traction) x 3 cycles, and medication management including nerve pain injections and NSAIDS.
>
> At this time, due to failed conservative treatment, imaging, testing, and physical exam findings and attempt to eliminate the use of opioid pain medications, I would like to request consideration for approval of [Petitioner's] bilateral lumbar facet injections CPT 64493 to be performed at L4-S1 levels.

Exhibit A, page 65

10. The Internal Appeal also included Daily Notes for physical therapy that Petitioner received at Team Rehabilitation Physical Therapy, with the earliest note dated April 21, 2021, and the most recent note dated May 14, 2021. (Exhibit A, pages 67-88).

11. On October 7, 2021, Respondent sent Petitioner written notice that her Internal Appeal was denied. (Exhibit A, pages 89-99).

12. With respect to the reason for the denial, the notice stated:

> **We received a request for a shot to help treat pain in your lower back (lumbar/sacral facet joint block injection). The notes show you have back pain. The notes show you have had therapy for your pain in the past. Per the NIA Clinical Guideline 301 for Facet Injections or Blocks, the notes must show:**
>
> - **You did least six weeks of upper back exercises or stretches (formal physical therapy, chiropractic treatments, or supervised home exercise program) in the last six months**
>
> - **Doctor's note stating a medical reason you cannot exercise**
>
> **The notes did not show this. Therefore, the request remains denied.**

> **Your appeal and all clinical information were reviewed by an NIA Consultant who is a(n) M.D., board certified in Pain Medicine and Anesthesia. Following review of the recommendation by this reviewer, your appeal and all clinical information were reviewed by a MeridianHealth (Meridian) Medical Director. The reviewer is a(n) M.D. who is board certified in Obstetrics and Gynecology. The reviewer was not involved in the original decision. Meridian is keeping the first denial decision after this review.**

Exhibit A, pages 90-91

13. On January 20, 2022, 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 1-2).

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, Respondent has developed specific prior authorization requirements, utilization and management, and review criteria.

With respect to facet joint injections like the ones requested by Petitioner, that review criteria states in part:

> **INDICATIONS FOR FACET JOINT INJECTIONS OR MEDIAL BRANCH NERVE BLOCKS (Cervical, Thoracic, Lumbar)**
>
> To confirm disabling non-radicular low back (lumbar), mid back (thoracic), or neck (cervical, C2-T1) pain*, suggestive of facet joint origin as documented in the medical record based upon **ALL** of the following:
>
> - History, consisting of mainly axial or non-radicular pain unless stenosis is caused by synovial cyst (Khan, 2006; Manchikanti, 2013, 2009); **AND**
>
> - Lack of evidence, either for discogenic or sacroiliac joint pain as the main pain generators (Manchikanti, 2013, 2009); **AND**

- Lack of disc herniation or evidence of radiculitis as the main pain generators unless stenosis is caused by synovial cyst (Khan, 2006; Manchikanti, 2013, 2009); **AND**

- Pain causing functional disability or pain levels of ≥ 6 on a scale of 0 to 10 (Manchikanti, 2013, 2009; Summers, 2013); **AND**

- Duration of pain of at least 3 months (Manchikanti, 2013, 2009); **AND**

- Failure to respond to conservative non-operative therapy management* for a minimum of 6 weeks in the last 6 months prior to facet injections, or details of active engagement in other forms of active conservative non-operative treatment, if the patient had prior spinal injections, unless the medical reason this treatment cannot be done is clearly documented (Manchikanti, 2013; Summers, 2013); **AND**

- All procedures must be performed using fluoroscopic or CT guidance (Amrhein, 2016; Weininger, 2013).

NOTE: Ultrasound guidance is not a covered benefit and a procedure performed using ultrasound guidance is not reimbursable.

Exhibit A, pages 100-101

Here, Respondent denied Petitioner's request pursuant to that policy and on the basis that the documentation submitted, along with both the initial prior authorization request and the subsequent Internal Appeal, failed to demonstrate a failure to respond to conservative non-operative therapy management for a minimum of 6 weeks in the last 6 months prior to facet injections; details of active engagement in other forms of active conservative non-operative treatment; or a medical reason why conservative treatment cannot be done.

In response, Petitioner and her doctor testified that Petitioner has undergone physical therapy in the past, it was not successful, and that further conservative treatment would not be successful.

Petitioner has the burden of proving by a preponderance of the evidence that Respondent 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.

Respondent, as permitted by its contract and the MPM, has developed specific utilization review criteria, consistent with all applicable published Medicaid coverage and limitation policies, regarding the facet joint injections like the ones requested by Petitioner and Petitioner does not meet the required criteria in this case

Specifically, in part, the applicable criteria require documentation showing Petitioner's failure to respond to conservative non-operative therapy management for a minimum of 6 weeks in the last 6 months preceding the facet injections or a medical reason why the conservative non-operative therapy management cannot be done.

Here, there is no medical reason given for why conservative non-operative therapy management cannot be done and, while Petitioner did complete some physical therapy, it is undisputed that it was not for the six weeks necessary to be approved under the applicable criteria.

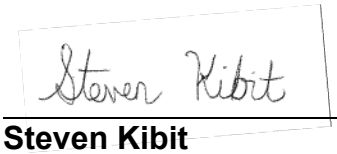
To the extent Petitioner has additional or updated information to provide, she and her doctor can always submit a new authorization request with that additional or updated information. With respect to the issue in this case; however, Respondent's decision must be affirmed given the available information and applicable policy.

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/tem

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], MI [redacted]
Via First Class Mail

Authorized Hearing Rep.

Dr. Shawn Achtman, D.O.
9640 Commerce Rd. STE. 202
Commerce, MI 48382
Via First Class Mail

Community Health Rep

Katie Feher c/o Meridian Health Plan of Michigan Inc.
Kaitlynn Schwab
1 Campus Martius, Suite 700
Detroit, MI 48244
katie.feher@mhplan.com