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Date Mailed: May 9, 2022
MOAHR Docket No.: 22-000974
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 April 12, 2022. Dr. Shawn Achtman, D.O., appeared and testified on Petitioner's behalf, with Petitioner also present for the hearing. Katie Feher, Senior Manager of Operations, appeared and testified on behalf of Meridian Health, the Respondent Medicaid Health Plan (MHP). Dr. Angela Porter, Senior Medical Director, also testified as a witness for Respondent.

During the telephone hearing, Respondent submitted an evidence packet that was admitted into the record as Exhibit A, pages 1-76. Petitioner did not submit any proposed 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 9).

2. On December 21, 2021, Respondent received a prior authorization request for sacroiliac joint injections for pain management submitted on Petitioner's behalf by her doctor. (Exhibit A, pages 9-34).

3. The supporting medical documentation submitted along with that request provided that Petitioner has been diagnosed with global joint pain; myalgia; and sacrococcygeal disorders, not elsewhere classified. (Exhibit A, pages 12, 22).

4. The supporting documentation also stated in part:

> Her chief complain [sic] is pain and aches in her low back, both legs, knees, fingers, and hands. She describes this pain as feeling like "arthritis". She currently sees Dr. Sukumaran for treatment of her back pain. He has treated her with lumbar spine and SI injections which offer a few weeks of relief. While the treatments have been helpful, they have not taken her pain away completely.
>
> In the past she was prescribed Gabapentin 300 mg and Zonisamide qhs. The Gabapentin caused her to feel "drunk" when she woke up during the night and drowsy during the day. The Zonisamide negatively affected her mood. In April 2021, she decided to stop taking the medications and immediately started to feel the pains and aches. Her pain is worse in the morning and it usually takes 30 minutes to an hour for it to become tolerable. She also notices some stiffness. She denies any swelling.
>
> For pain she takes Tramadol 50 mg PRN and Motrin 800 mg PRN depending on her work schedule. She was prescribed Meloxicam but found it ineffective.
>
> *Exhibit A, page 9*

5. On January 4, 2022, Respondent sent Petitioner written notice that the prior authorization request had been denied. (Exhibit A, pages 35-45).

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

> **This action is based on the following:**
> Your doctor's request for a(n) Sacroiliac Joint Injection (Lower Back Injection (Shot)) has been denied.
>
> - NIA Clinical Guideline 305 for Sacroiliac Joint injections 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 you had at least 50% less pain after your last injection. The doctor's notes can say how much easier it was for you to do specific things (also provide date of service of prior sacroiliac joint injection). 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 37

7. On January 15, 2022, Petitioner filed an Internal Appeal with Respondent regarding that decision. (Exhibit A, pages 46-56).

8. As part of that appeal, Petitioner's doctor stated that, while the denial indicated that Respondent requested, but did not receive, information from Petitioner's doctor:

> Our records do not indicate receiving a request for such records. However, attached you will find an office note addressing the information needed. I hope this will result in a positive result for the patient.

Exhibit A, page 51

9. The office note included along with the Internal Appeal stated in part:

> [Petitioner] was reevaluated via telephone on 1/12/2022.
>
> She is hoping to get her right SI block ASAP. Her pain has been present for 4 years. Her pain at baseline is 7/10. Previous injections by Dr. Sukumaran were effective at about 60%, but did not last. She is looking forward to getting a better diagnosis and therefore treatment at this time. Other treatment for this issue has included OP PT x2 and medications with some relief. Her pain makes it difficult for her to work, household chores, sleep and

prolonged sitting and standing.

Exhibit A, page 54

10. On February 10, 2022, Respondent sent Petitioner written notice that her Internal Appeal was denied. (Exhibit A, pages 58-66).

11. With respect to the reason for the denial, the notice stated in part:

> **We received the request for a shot of special pain medicine into the joints between your pelvis and tailbone (Sacroiliac Joint Injection). The notes show you have low back pain and previous injections for treatment. The notes show that activity was encouraged as tolerated. Per the NIA Clinical Guideline 305 for Sacroiliac Joint Injection, the notes must show:**
>
> - **You received 50 percent improvement from your [sic] last injection (Sacroiliac Joint Injection)**
>
> *** * ***
>
> **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 Management and Anesthesiology. 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 Family and Pediatric Medicine. The reviewer was not involved in the original decision. Meridian is keeping the first denial decision after this review.**

Exhibit A, pages 58-59

12. On March 4, 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 1-3).

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, October 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 sacroiliac joint injections like the ones requested by Petitioner, that review criteria states in part:

> **INDICATIONS FOR SACROILIAC JOINT INJECTIONS (SJI) (Intraarticular or ligamentous injections only)**
>
> - **For the treatment of Sacroiliac Joint (SIJ) pain - All** of the following must be met:
>   - Low back pain maximal below level of L5 which may radiate to the groin or lower extremity persisting at least 3 months (Manchikanti, 2013a); **AND**
>
>   - Positive exam findings to suggest the diagnosis which include the pelvic distraction test, pelvic compression test, thigh thrust test, FABER (Patrick's test) or Gaenslen's test (MacVicar, 2017; Telli, 2018); **AND**
>
>   - Failure to respond to conservative non-operative therapy management* for a minimum of 6 weeks in the last 6 months, 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, 2013a; Summers, 2013); **AND**
>
>   - Pain causing functional limitations or pain levels of ≥ 6 on a scale of 0 to 10 (Manchikanti, 2013a, 2009; Summers, 2013); **AND**
>
>   - All procedures must be performed using fluoroscopic or CT guidance (Schneider, 2020)

NOTE: SI joint injections performed at the same time as facet injections will be deemed **not** medically necessary.

* * *

FREQUENCY OF REPEAT THERAPEUTIC INJECTIONS

- SIJ injections may be repeated up to 2 times in the initial treatment phase no sooner than 2 weeks apart provided that at least 50% relief is obtained (Manchikanti, 2013a); **AND**

- SIJ injections may only be repeated after the initial treatment phase if symptoms recur and the patient has had at least a 50% improvement for a minimum of 6 weeks after each therapeutic injection (Manchikanti, 2013a); **AND**

- The patient is actively engaged in other forms of active conservative non-operative treatment, unless pain prevents the patient from participating in conservative therapy (AHRQ, 2013; Qassem, 2017; Summers, 2013); **AND**

- Repeat injections should not be done more frequently than every two months for a total of 4 injections in a 12 month period (Manchikanti, 2013a); **AND**

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

NOTE: Injecting multiple regions or performing multiple procedures during the same visit may be deemed medically **unnecessary** unless documentation is provided outlining an unusual situation (ODG, 2017).

Exhibit A, pages 67-69

Here, Respondent denied Petitioner's request for sacroiliac joint injections for pain management pursuant to the above policy.

In support of Respondent's action, its Senior Manager of Operations testified regarding the review process, both at the initial level and the Internal Appeal level, and the clinical guidelines utilized. She also testified that there is a difference in this case between what the policy requires for repeat injections, *i.e.,* that the patient has had at least a 50%

improvement for a minimum of 6 weeks after each therapeutic injection, and what the notices of denial stated, *i.e.,* that had 50% improvement after her last injection, with no length of time for the improvement specifically required.

Respondent's Senior Medical Director testified that the information submitted in this case failed to demonstrate that Petitioner met the applicable criteria, with nothing in the initial request indicating that Petitioner had at least 50% less pain after previous injections; Respondent's attempts to contact Petitioner's doctor's office were unsuccessful; and the Internal Appeal failing to provide any definitive information. She did agree that Petitioner had previous injections and that a note submitted along with the Internal Appeal stated that Petitioner had 60% relief from previous injections, but also testified that the note was insufficient because Respondent needed something more definitive.

In response, Petitioner's representative/doctor testified that Petitioner was a new patient to him, but that while he was not her doctor when pain management injections were first approved, he did see that conservative treatment had been tried and was unsuccessful; Petitioner has the pathology for the injections; and Petitioner received multiple injections with Dr. Sukumaran over a two-year period. He also testified that, as provided in the note he submitted along with the Internal Appeal, the previous injections were effective at about 60%, but did not last. He further testified that while he does have the injection records, his note was based on conversations with Petitioner.

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 repeat sacroiliac 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 provides that the injections may only be repeated after the initial treatment phase if symptoms recur, and the patient has had at least a 50% improvement for a minimum of 6 weeks after each therapeutic injection.

However, as discussed during the hearing, while the policy itself is clear, there is a discrepancy in what that policy states and what the notices of denial sent to Petitioner provided. Specifically, while the policy states that injections may only be repeated if the patient had at least 50% improvement in symptoms for a minimum of 6 weeks after each therapeutic injection, the notices did not say anything about the length of time that

improvements must last and solely stated that there had to be at least a 50% improvement.

Nevertheless, that error is ultimately harmless in this case as, even holding Respondent to a portion of its policy and solely to what the notices of denial identified as the reason for the denial, Petitioner has still failed to meet her burden of proof. The doctor's note from January 12, 2022, does provide that Petitioner has 60% relief from injections provided months or years previously, but the undersigned Administrative Law Judge does not find that note sufficiently credible or persuasive as it was based solely on a statement by Petitioner, who did not testify at the hearing, after the initial denial was issued and it lacks any other supporting documentation, such as contemporaneous notes from Dr. Sukumaran completed at the times the injections were being provided.

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: Petitioner 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
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