[redacted]
MI [redacted]

Date Mailed: August 11, 2022
MOAHR Docket No.: 22-002648
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 July 20, 2022. Petitioner appeared and testified on her own behalf. Lisa Johnson, Appeals and Grievance Lead, appeared and testified on behalf of Molina Healthcare of Michigan, the Respondent Medicaid Health Plan (MHP). Dr. Keith Tarter, Senior 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 1-106. Petitioner did not submit any exhibits.

ISSUE

Did Respondent properly deny Petitioner's request for facet joint 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] ([redacted]) year-old Medicaid beneficiary who is enrolled in the Respondent MHP. (Exhibit A, page 6).

2. On April 1, 2022, Respondent received a prior authorization request for facet joint injections submitted on Petitioner's behalf by her doctor. (Exhibit A, pages 6-7).

3. In part, the request indicated that Petitioner has been diagnosed with spondylosis without myelopathy or radiculopathy, lumbar region. (Exhibit A, page 6).

4. On April 12, 2022, Respondent sent Petitioner written notice that the prior authorization request had been denied. (Exhibit A, pages 10-19).

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

> TO MEMBER:
>
> Molina received a request. This is for you. This is for you to get pain treatment. This is for a type of pain shots. This is to treat your spine pain. For approval, all criteria must be met. The pain shots are given into your spine area. They are given in the space known as the facet joint area. The notes show you [sic] a spine (back) condition that causes you pain. However, more than two facet injections at the same level are considered therapeutic rather than for diagnostic purposes. Facet joint pain shots for therapeutic reasons are not considered necessary to treat your medical condition. Therapeutic facet joint pain shots (medial branch blocks) are not considered medically necessary. Therefore, this request does not meet criteria. This request is denied. Please speak to your doctor if you have questions. Your doctor can assist you with your other treatment options.
>
> CRITERIA USED FOR THIS DECISION: Molina Clinical Review Facet Joint/MBB Diagnostic Injections for Chronic Spinal Pain policy criteria.
>
> TO PROVIDER:
>
> This request is denied. This does not meet Molina Clinical Review Facet Joint/MBB Diagnostic Injections for Chronic Spinal Pain policy criteria. More than two facet injections/medial branch blocks at the same level are considered to be therapeutic rather than diagnostic. Therapeutic facet injections/medial branch blocks are considered not medically necessary per Molina policy.
>
> A Molina Healthcare of Michigan Medical Director, Dental Director or Clinical Pharmacist

> is available to discuss the denial decision with any treating practitioner.

Exhibit A, page 10

6. Petitioner subsequently filed an Internal Appeal with Respondent regarding that decision. (Exhibit A, pages 20-85).

7. Along with that request, Petitioner submitted medical records. (Exhibit A, pages 22-85).

8. One record was from a January 15, 2021, medical appointment with a Dr. David Kim, where the doctor noted:

> [Petitioner] was last seen in the pain clinic on 12/8/20 during which she underwent bilateral L345 mbb.
>
> Returns today via video for re-evaluation. Reports 100% relief the first week before pain gradually returned. Currently, pain is in bilateral low back. She is currently getting chiropractic therapy with good results. Denies chills, fever, suicidal thoughts, focal weakness or recent changes in bowel/bladder function.
>
> * * *
>
> **Recommendation:**
> 1. Continue chiropractic therapy since it seems to help.
> 2. Please schedule for bilateral medial branch block as discussed. If this provides up to 80% relief for at least 12 hours, we could then plan for RFTC, one side at a time.

Exhibit A, pages 22, 27

9. Other records also demonstrated that Petitioner subsequently underwent the medial branch blocks, which she received relief from. (Exhibit A, pages 70-80; Testimony of Respondent's Senior Medical Director).

10. Later records further demonstrated that Petitioner also received intraarticular facet steroid injections and that she had relief from those as well. (Exhibit A, pages 31, 34-35, 44-46, 56-57; Testimony of Respondent's Senior Medical Director).

11. On May 4, 2022, Respondent sent Petitioner written notice that her

Internal Appeal was denied. (Exhibit A, pages 88-98).

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

> Your appeal was reviewed by a Molina Healthcare of Michigan Medical Director, who is a Medical Doctor DO and is certified in Family Medicine.
>
> Upon review, the documentation submitted shows more than two facet injections/medial branch blocks at the same level are considered to be therapeutic rather than diagnostic. Therapeutic facet injections/medial branch blocks are considered NOT medically necessary.
>
> The request remains denied. This does not meet **Molina MCR-030** criteria. This is our final adverse determination.
>
> You can request, without cost (free of charge), a copy of the medical criteria. You can also have access to copies of all information used to make this decision without cost (free of charge). This completes the appeal process for Molina Healthcare.

Exhibit A, page 88

13. On June 22, 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 2-5).

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, 2022 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:

INITIAL CRITERIA RECOMMENDATION

1. **Diagnostic** facet joint injections/MBBs may be considered medically necessary for facet joint pain in adults who are age 18 years or older as part of a comprehensive pain management treatment program when all the following criteria are met: [ALL]

   - Presence of chronic severe back pain (cervical, or lumbar) that is predominately axial not associated with radiculopathy or neurogenic claudication present for a minimum of **3 months that is:** [ALL]

     - resulting from disease, injury or surgery; and

     - confirmed by provocative testing resulting in reproducible pain (i.e., hypertension, rotation); and

   - Pain is affecting activity of daily living functional ability: >4 on the NRS Pain Rating Scale*; and

   - Physical evaluation has ruled out that no non-facet pathology that could explain the source of the patient's pain, such as discogenic, sacroiliac joint pain, disc herniation, fracture, tumor, infection; and

   AND

   - Has tried and failed a minimum of 3 months of conservative therapy (i.e. for the <u>current episode of pain</u> that includes: [ALL]

   * * *

2. **Diagnostic Facet Joint Injection/Medial Branch Block (MBB) Criteria**

   The primary efficacy of diagnostic facet injections/MBBs is to determine the appropriateness for a radiofrequency neurotomy of painful segmental levels in order to achieve long-term pain management. A positive response is defined as at least 70% relief of the primary (index) pain,

with the onset and duration of relief being consistent with the local anesthetic employed and measured by a decrease in pain medication and increase in functional ability. All of the following criteria apply: **[ALL]**

- For each covered spinal region (cervical or lumbar), diagnostic facet joint injections/MBBs should be performed at no more than four (4) joints per session (e.g., two [2] bilateral levels or four [4] unilateral levels).

- A second diagnostic facet joint injection/medial branch block (i.e. dual), performed to confirm the validity of the clinical response to the initial facet joint injection performed in the same location(s) on two separate occasions at least one week apart, are considered medically necessary to confirm the diagnosis due to the unacceptably high false positive rate of singe MBB injections when ALL of the following criteria are met:

    - Administered at the same level as the initial block

    - The initial diagnostic facet joint injection produced a positive response (i.e., at least 70% relief of facet mediated pain for at least the expected minimum duration of the effect of the local anesthetic)

    - A radiofrequency joint denervation/ablation procedure is being considered

- A maximum of six (6) facet joint procedural sessions per region (cervical or lumbar) may be performed in a 12-month period.

- More than two facet injections/medial branch blocks at the same level are considered to be therapeutic rather than diagnostic. Therapeutic facet injections/medial branch blocks are considered NOT medical necessary.

Exhibit A, pages 100-101

Here, Respondent denied Petitioner's request pursuant to that policy and on the basis that the documentation submitted, including Petitioner's medical records, failed to demonstrate that Petitioner met the applicable criteria. Specifically, Respondent's Senior Medical Director testified that Petitioner has already received two facet injections/medial branch blocks and, while Petitioner received some relief from them, the applicable policy provides that more than two facet injections/medial branch blocks at the same level are considered therapeutic in nature, rather than diagnostic, and are not medically necessary. He also testified that, rather than more injections, the proper and necessary treatment is a radiofrequency ablation (RFA), which was what Petitioner's treatment plan initially called for. He further testified that Respondent spoke with Petitioner's doctor after the denial, and that Petitioner's doctor indicated agreement with the RFA.

In response, Petitioner testified that she is open to trying something else, but that she believes that she already underwent the radiofrequency ablation Respondent is now suggesting approximately seven years ago. She also testified that her doctor wanted her to have the injections, while also testifying that she has not spoken with her doctor since the denial.

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.

The applicable policy expressly provides that more than two facet injections/medial branch blocks at the same level are considered to be therapeutic and not medically necessary, and it is undisputed that Petitioner has already received at least two injections or blocks at the requested level in this case. Moreover, Respondent's Senior Medical Director credibly and fully explained what procedure would be necessary and appropriate, and, while Petitioner testified that she has already received that procedure, her testimony is unsupported by the medical documentation, with no mention of the procedure other than the doctor recommending it.

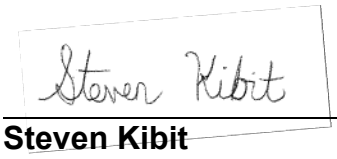
To the extent Petitioner has additional or updated information to provide, she and her doctor can always submit a new authorization request with that additional or updated information. With respect to the issue in this case; however, Respondent's decision must be affirmed given the available information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

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

Via Electronic Mail:

DHHS Department Contact
MDHHS
CCC, 7th Floor
Lansing, MI 48919
MDHHS-MCPD@michigan.gov

Community Health Rep.
Chasty Lay
c/o Molina Healthcare of Michigan
880 W. Long Lake Rd., Suite 600
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Chasty.Lay@MolinaHealthCare.com
Lisa.Johnson@MolinaHealthCare.com

Via First Class Mail:

Petitioner
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[redacted] MI [redacted]