



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
MI [REDACTED]

Date Mailed: June 14, 2023  
MOAHR Docket No.: 23-002607  
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 Petitioner’s request for a hearing.

After due notice, a telephone hearing was held on June 8, 2023. Dr. Sanjay Patra, M.D., appeared and testified on Petitioner’s behalf. Melissa Sweet, Appeals Coordinator, represented McLaren Health Plan, the Respondent Medicaid Health Plan (Department). Dr. Dennis Perry, Chief Medical Officer, testified as a witness for Respondent.

Exhibits:

Petitioner	None
Department	A – Hearing Summary

**ISSUE**

Did Respondent properly deny Petitioner’s request for a responsive intracranial neurostimulator?

**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).
2. On or about March 6, 2023, Department received a prior authorization request for a responsive intracranial neurostimulator submitted on Petitioner’s behalf by her doctor. (Exhibit A).
3. In part, that request indicated that Petitioner suffers idiopathic generalized

epilepsy, intractable. The request further stated Petitioner's condition had worsened, and her medications have had less affect. (Exhibit A; Testimony).

4. On March 14, 2023, Department sent Petitioner and Petitioner's doctor written notices that the prior authorization request had been denied. (Exhibit D; Exhibit E).
5. With respect to the reason for the denial, the notice to Petitioner stated:

This communication is in response to a request for authorization for a responsive intracranial neurostimulator (RNS). The information provided to us by your doctor does not include clinical documentation showing you have a partial or focal seizure disorder.

We have enclosed what we used to make this decision. We used the InterQual Stereotactic Introduction, Subcortical or Cortical Electrodes criterion. This criterion is widely used and developed using evidenced based, peer-reviewed journals, research, and specialists to determine medical necessity. Your Certificate of Coverage states that services and supplies must be medically necessary. We are unable to approve a responsive intracranial neurostimulator (RNS) for you based on the information provided to us.<sup>1</sup>

6. On March 21, 2023, Petitioner, through her doctor, filed an Internal Appeal with Respondent regarding that decision. (Exhibit A).
7. In part, that appeal included a letter from Petitioner's doctor stating:

McLaren Health Plan denied the initial auth request stating that the service is not medically necessary because [REDACTED] does not have focal epilepsy; she has drug-resistant generalized epilepsy.

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<sup>1</sup> Exhibit A, p 58.

This is medically necessary. For patients with drug-resistant generalized epilepsy, like [REDACTED] and my other patient that has been denied, there are no other approved or proven treatment options. Epilepsy surgery, a procedure to resect, ablate or disconnect a portion of the brain, is not an option for patients with generalized epilepsy since unlike partial onset seizures, seizures are generalized from onset and there is not a seizure focus to remove. RNS is the last resort to improve seizure control and quality of life.<sup>2</sup>

8. On March 23, 2023, Respondent sent Petitioner written notice that her Internal Appeal was denied. (Exhibit A).

9. With respect to the reason for the decision, the notice stated in part:

**Why did we deny your Internal Appeal?**

We denied your Internal Appeal for the service/item listed above because: Based on InterQual coverage criteria, the service under review is not medically necessary because the policy states that this treatment is indicated for partial or focal seizure disorder. This patient has absence and myoclonic Seizures. This guideline does not support this treatment for absence or myoclonic seizures, RNS is FDA approved for focal epilepsy.<sup>3</sup>

10. On May 9, 2023, the Michigan Office of Administrative Hearings and Rules received the request for hearing filed by Petitioner in this matter regarding Respondent's decision. (Exhibit A).

**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.

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<sup>2</sup> Exhibit A, p 19.

<sup>3</sup> Exhibit A, p 6.

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.

\* \* \*

### **1.3 SERVICES THAT MHPS ARE PROHIBITED FROM COVERING**

- Elective therapeutic abortions and related services. Abortions and related services are covered when medically necessary to save the life of the mother or if

the pregnancy is a result of rape or incest;

- Experimental/Investigational drugs, procedures or equipment;
- Elective cosmetic surgery; and
- Services for treatment of infertility.<sup>4</sup>

As allowed by the above policy and its contract with the Department, the MHP has chosen to use its own prior authorization requirements, utilization management, and review criteria. Specifically, as explained by Respondent's witness and demonstrated by its exhibits, Respondent uses InterQual guidelines when reviewing requests.

Moreover, for stereotactic introduction, subcortical or cortical electrodes like what was requested in this case those guidelines specifically require that a patient be diagnosed with partial or focal seizure disorder.

Accordingly, as Petitioner has not been diagnosed with partial or focal seizure disorder, and instead has a generalized seizure condition, Respondent found that Petitioner failed to meet the applicable criteria and denied her request.

In appealing that decision, 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 responsive intracranial neurostimulators like the one requested by Petitioner; and Petitioner undisputedly does not meet that required criteria given her identified diagnoses.

Moreover, while Petitioner seeks an exception to that criteria given her extenuating circumstances, and on the basis of medical necessity, the record further demonstrates that the request is for a non-covered experimental service given the lack of any approval from the Food and Drug Administration (FDA) and further failed to meet the provisions of the InterQual guidelines, none of which Petitioner's representative disputed.

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<sup>4</sup> Medicaid Provider Manual, Medicaid Health Plan Chapter, January 1, 2023, pp 1, 4.

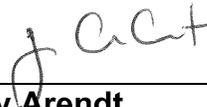
**DECISION AND ORDER**

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

**IT IS, THEREFORE, ORDERED** that:

Department's decision is **AFFIRMED**.

CA/pe



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**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

**Via Electronic Mail:**

**Community Health Representative**

McLaren Health Plan  
G 3245 Beecher Rd.  
Flint, MI 48532

**Mhpappeals@mclaren.org**

**Chiqueshia.Tims@mclaren.org**

**DHHS Department Contact**

Managed Care Plan Division  
MDHHS

400 S. Pine St., 7<sup>th</sup> Floor

Lansing, MI 48933

**MDHHS-MCPD@michigan.gov**

**Via First Class Mail:**

**Authorized Hearing Representative**

Dr. Sanjay Patra, MD  
25 Michigan St. NE, Suite 6100  
Grand Rapids, MI 49503

**Petitioner**

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