



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
**DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS**  
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
SUZANNE SONNEBORN  
EXECUTIVE DIRECTOR

MARLON I. BROWN, DPA  
ACTING DIRECTOR

[REDACTED]  
MI [REDACTED]

Date Mailed: November 9, 2023  
MOAHR Docket No.: 23-006491  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Corey Arendt**

**DECISION AND ORDER**

This matter is before the undersigned Administrative Law Judge (ALJ) pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, following Petitioner's request for a hearing.

After due notice, a hearing was held November 7, 2023. Petitioner appeared and testified on her own behalf. Mark Kopson, Attorney, appeared on behalf of Respondent, Aetna Better Health of Michigan (Department). Dr. Jacqueline Simmons, Chief Medical Officer, and Melissa Armstrong, Nurse Coordinator, appeared as witnesses for the Department.

Exhibits

- |            |  |
|------------|--|
| Petitioner | None                                       |
| Department | 1 – 7/2/23 Prior Authorization Denial      |
|            | 2 – 10/10/23 Denial Determination Notice   |
|            | 3 – 9/22/23 Request for State Fair Hearing |
|            | 7 – eviCore Spine Imaging Guidelines       |
|            | 8 – Petitioner's Medical Records           |
|            | 11 – Medicaid Provider Manual excerpts     |
|            | 12 – Medicaid Provider Manual excerpts     |

## **ISSUE**

Did the Department properly deny the Petitioner's prior-authorization request for an MRI of his lower back?<sup>1</sup>

## **FINDINGS OF FACT**

The Administrative Law Judge (ALJ), based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Petitioner is a Medicaid beneficiary enrolled with Department. (Testimony.)
2. On or around September 18, 2023, Petitioner's physician sought prior approval for an MRI of Petitioner's lower back. (Exhibit 1; Testimony.)
3. On September 21, 2023, Department sent Petitioner a Notice of Adverse Determination. The notice indicated the denial was based on the following:
  - Two sets of pictures (without a dye and then with a dye) are not needed to show your doctor the details needed to treat you. One picture study taken with a dye or without a dye is sufficient.
  - A detailed picture study (magnetic resonance imaging or MRI) of your spine with pictures. (Exhibit 1.)
4. On October 10, 2023, Department sent Petitioner a Notice of Internal Appeal Decision – Denial. The notice indicated the following:

Your doctor asked us to cover a special type of X-Ray (MRI) of lumbar spine without and with dye) of your back. This is to treat your low back pain. Two sets of pictures (without dye and then with dye) are not covered to show your doctor the details. He can treat you by seeing just one picture. Only one picture taken with dye or without dye is enough. Therefore, denial is upheld. (Exhibit 2.)

---

<sup>1</sup> Petitioner was also appealing a denial of an MRI of her knee. Upon commencement of the hearing, however, Petitioner's issue was resolved with the Department agreeing to approve an MRI of her knee without contrast upon a new prior authorization request.

5. On October 5, 2023, the Michigan Office of Administrative Hearings and Rules, received from Petitioner, a request for hearing. (Hearing File.)

## **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.

On May 30, 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 Department 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 Community Health (MDCH) 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 MDCH 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>2</sup>

The contract provisions allow prior approval procedures for utilization management purposes. The Department indicated they reviewed the prior authorization request under their guidelines for MRI's of the lumbar spine and denied the request because the documentation presented with the PA request did not meet their guidelines. Specifically, the Department witness testified the denial was a result of the Petitioner not having undergone the requisite amount of Physical Therapy. The denial notices provided to Petitioner, however, do not indicate this as the reason for the denial. Instead, the denial hints that the denial was a result of the requesting physician requesting both an MRI with dye and one without and there only being a need for one of the two requests.

Petitioner indicated that since the negative action notices, she has undergone a series of physical therapy and had tried and failed a home program without relief.

The Department's evidence failed to demonstrate conformity with the applicable laws and policies due to a stark inconsistency between the testimony at the hearing and the reasons provided in the negative action notices. The testimony presented at the hearing provided a valid and acceptable reason for the denial, perfectly aligning with the prior authorization criteria. However, the negative action notices presented an entirely different rationale for the denial, creating a significant disparity. This discrepancy raised concerns and cast doubt on the Department's actions.

### **DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the denial of the Petitioner's request for prior authorization for an MRI of her lower back was not supported by Medicaid Policy.

**IT IS THEREFORE ORDERED** that:

The Department's decision is **REVERSED**.

The Department is ordered to initiate the reprocessing of the Petitioner's request for a MRI of her lower lumbar spine and work with the Petitioner on updating her application package to include any new documentation related to her physical therapy.

CA/pe

  
\_\_\_\_\_  
**Corey Arendt**  
Administrative Law Judge  
for Elizabeth Hertel, Director  
Department of Health and Human Services

<sup>2</sup> MPM, Medicaid Health Plans, July 1, 2023, p 1.

**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**

Aetna Better Health of Michigan  
Grievances and Appeals - Aetna Better  
Health of MI  
Southfield, MI 48034

**MIAppealsandGrievances@AETNA.com**

**Counsel for Respondent**

Mark S. Kopson  
Plunkett Cooney  
38505 Woodward Ave., Ste. 100  
Bloomfield Hills, MI 48304

**Mkopson@plunkettcooney.com**

**DHHS Department Contact**

Managed Care Plan Division  
MDHHS  
Lansing, MI 48933

**MDHHS-MCPD@michigan.gov**

**Via First Class Mail:**

**Petitioner**

[REDACTED]

[REDACTED] MI [REDACTED]