



GRETCHEN WHITMER
GOVERNOR

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

MARLON I. BROWN, DPA
ACTING DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: January 31, 2024
MOAHR Docket No.: 23-007992
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 January 11, 2024. [REDACTED] the minor Petitioner's mother, appeared and testified on Petitioner's behalf. Katie Feher, Senior Manager of Appeal Operations, appeared and testified on behalf of Meridian, the Respondent Medicaid Health Plan (MHP or Respondent). Dr. Jessie Marshall, Senior Medical Director, also testified as a witness for Respondent.

During the hearing, Respondent submitted an evidence packet that was admitted into the record without objection as Exhibit A, pages 1-130. No other proposed exhibits were submitted.

ISSUE

Did Respondent properly deny Petitioner's request for reimbursement for out-of-state, out-of-network services?

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 enrolled with Respondent. (Exhibit A, page 11).
2. On October 5, 2023, Respondent received a prior authorization request, submitted on Petitioner's behalf by a Dr. Souheil Gebara, requesting that Petitioner be approved for outpatient office visits with Nationwide Child, a provider outside of Respondent's network of providers and located in Cincinnati, Ohio. (Exhibit A, pages 10-16).

3. Attached to the request was a progress note dated August 30, 2023, from Dr. Mouhib Ayas, M.D., a consulting physician, in which Dr. Ayas wrote in part:

History:

This is a [redacted] y.o. [sic] female was seen on [redacted] 2023. The patient has a longstanding history of constipation with extensive work-up at the University of Michigan and Cincinnati Children's Hospital including rectal biopsy that was negative for Hirschsprung disease. The patient 1 week prior to admission started complaining of abdominal pain and also felt nauseated and developed fever. The mom give [sic] her suppository and she did have some stool however she continued to have consistent fever and started having vomiting and was seen in the emergency room and was diagnosed with UTI and severe constipation. The patient was admitted to the hospital and has been receiving GoLytely through NG tube with good result.

* * *

Plan:

I recommend that the patient be started on lactulose 15 mL twice per day to be increased to 3 times per day in 1 week if needed.

If no bowel movement in 3 to 5 days I recommended Senokot 8.6 or 8.8 mg orally or 1 teaspoon.

Encourage toilet sitting on a regular basis for 5 to 10 minutes after meals.

I also recommended that the patient receives 12 g of fiber per day with plenty of fluid.

Follow-up with Dr. S. Gebara in 3 weeks.

Exhibit A, pages 13-14

4. The prior authorization request also included a progress note dated January 20, 2023, from Dr. Gebara in which he stated in part:

Chief complaint: Ileus and abdominal pain

History: [Petitioner] is a [redacted]-year-old female who according to the mother started noticing abdominal distention

last May. The mother said that she looked like a

pregnant woman. With that she had abdominal pain. She was diagnosed with constipation and had multiple treatment. She went to University of Michigan emergency department twice when they give her milk of molasses enema the other 1 they gave her a cleansing with GoLytely, The third time they give her high-dose senna and she developed fever, chill and weakness. She went back to the University of Michigan where she was diagnosed with septic shock and the mother was told there was translocation of bacteria from the gut to the blood. She had multiple x-ray and CT of the pelvis that showed dilation of the colon and part of the small bowel. Also she had a barium enema that was read as normal. She had colonic transit time that was normal. The mother said that she never had constipation she always passed at least 1 soft stool per day until last May and since that time she passes 1 bowel movement every [sic] 2 to 3 days. It is usually soft without any pain blood mucus or melena. She complains of epigastric pain very localized, does not radiate and poorly defined. I could not get specifics about the timing of the pain although it is definitely occurring after eating and if she drinks then ran. First they told me that the pain is there all the time but it looks like It lasts for a long time. The mother said that every time she asks if how much in pain she is progressing would be 4/10. She said on occasion she has nausea but she does not vomit There is no regurgitation or heartburn and there is no dysphagia. There is no weight loss she is gaining weight. She seems to be developing normally. She does not have any neurologic symptoms she walks and run normally. The mother said that she does not feel like passing urine but when she decided to pass urine she passes a very large amount. She thinks that she does not have normal sensation in her bladder. There is no asthma or eczema otherwise review of over 12 Systems and past medical history are negative. Family history remarkable that the grandmother has gastroesophageal reflux disease. She1 lives, With her mother and there is no unusual exposure.

* * *

Impression: [Petitioner] has a history of possible ileus as diagnosed by history of abdominal distention, abdominal x-ray and CT of the pelvis. What is concerning that she had sepsis, according to the mother, that was triggered by gastrointestinal bacteria. 'What is against ileus is the lack of vomiting or bilious vomiting and normal colonic transit time, It is interesting that she has some sensation abnormalities in her bladder which brings up the possibility of spinal or neurologic etiology, at the same time there is no sensation or motor abnormalities in her legs and there is no sensation abnormalities in her rectum. Her barium enema is normal and she did not have any constipation before last May which makes Hirschsprung's or any other congenital etiologies unlikely. She has epigastric pain and the history is not completely clear. This could be dyspeptic and the question in my mind could she have dyspeptic abdominal pain that triggers air swallowing that was diagnosed as ileus?. Because of that I elected to try her on Prilosec 20 mg once a day. If that does not help motility evaluation should be done. There are multiple centers in Ohio that can do that. I recommend Cincinnati. I asked the mother to call me if there is any change in symptoms and I will reevaluate her in 2 weeks to see if the treatment made any difference. The visit and review of record lasted more than an hour.

Exhibit A, page 15

5. The third and final progress note included as part of the prior authorization request was a note dated May 26, 2023, from Dr. Gebara in which he stated in part:

Chief complaint: Abdominal pain and constipation

History [REDACTED] did not benefit from the Prilosec and her epigastric pain did not change. It happens almost every day randomly and it is poorly defined. It does not radiate. On occasion there is nausea but there is no vomiting. She denies regurgitation or heartburn and there is no dysphagia. She is passing 1 bowel movement per week sometimes dry sometimes hard without any blood mucus or melena. She went to Cincinnati where EGD and colonoscopy were done and the biopsies were normal! Small bowel and

colonic motility studies were done and they were normal. She is not on any medicine now.

* * *

Impression: [Petitioner] has a history of possible ileus as diagnosed by history of abdominal distention, abdominal x-ray and CT of the pelvis. She had normal small bowel and colonic motility which I discussed over the phone with Dr. Kaul. She had normal EGD and colonoscopy. Obviously she has constipation and I am not really sure about the etiology of her epigastric pain that could be constipation because she failed Prilosec. In addition her esophageal gastric and duodenal biopsies were normal. In Cincinnati her hemoglobin was somewhat low. To further evaluate iron-anemia I elected to check CBC with differential and iron studies. She had elevation in AST so I am checking comprehensive metabolic panel and GGT. For her epigastric pain I am also checking amylase and lipase. I am going to start her on Dulcolax 5 mg once a day and MiraLAX 17 g once a-day. The mother will call me if there is any question otherwise I will see her back in 1 month.

Exhibit A, page 16

6. On October 9, 2023, Respondent sent Petitioner written notice that the prior authorization request had been denied. (Exhibit A, pages 17-29).
7. With respect to the reason for the denial, the notice stated:

This action is based on the following:

Diagnosis: Constipation (a problem with passing stool)

Requested service: Out of Network / Out of State Visits

Out of Network Provider: Souheil Gebara

This provider does not have a contract to work with us and is out of state and out of network.

The request is denied for these reasons:

-This provider does not agree to and/or take the state's Medicaid payment rates

-Your child's health would not be at risk if you had to travel back to your home state for care

-The service is available in your child's home state or

borderland areas

Please talk to your provider about this.

Criterion used to make this decision:

Meridian Medical Policy MI.CP.MP.528 Review of Out
of Network and Non-Emergent Out of
State Services

The provider(s) listed below are in our network:

In-network Provider #1

Spectrum- Helen Devos Children's

Name: Vanessa Cardenas Soto, MD

Address: 3960 Patient Care Drive

Suite 113

Lansing, Michigan 48911

Phone Number: 616-267-9150

In-network Provider #2

Name: Ascension St. John Pediatric Gastroenterology

Address: 22201 Moross Road

Detroit, Michigan 48236

If you need help finding a provider, please call
Customer Experience at 855-537-9746.

Exhibit A, pages 18-19

8. On October 12, 2023, Petitioner's representative filed an Internal Appeal with Respondent regarding that denial. (Exhibit A, pages 29-32, 111).
9. In that Internal Appeal, Petitioner's representative asserted in part that, as agreed upon by all of Petitioner's doctors, Petitioner needs treatment at a motility clinic and, while she was previously seen at a motility clinic in Cincinnati, there was only testing, and no treatment, provided there for some unknown reason. (Exhibit A, page 30).
10. Petitioner's representative did not include any new medical documentation as part of the Internal Appeal. (Testimony of Petitioner's representative).
11. In reviewing Petitioner's Internal Appeal, Respondent did gather additional medical documentation from Petitioner's providers. (Exhibit A, pages 33-109).
12. On October 27, 2023, Respondent sent Petitioner a written notice stating that her Internal Appeal was denied. (Exhibit A, pages 110-120).

13. With respect to the reason for its decision, Respondent stated in part:

We received the request for your child to be seen Out of Network/Out of State by Dr. Neetu Puri at Nationwide Children's Hospital. The notes show your child has constipation. The notes show your child has already had a special test to check the function of how food moves through the digestive system (Motility Test at Cincinnati). This test was reported as normal. Per the Meridian Medical Policy MI.CP.MP.528 Review of Out of Network and Non-Emergent Out of State Services, your child's request was denied for these reasons:

- This provider does not agree to and/or take the state's Medicaid payment rates
- Your child's health would not be at risk if you had to travel back to your home state for care

The notes did not show this. Therefore, the request remains denied.

The provider(s) listed below are in our network:

A) Children's Hospital of Michigan-Pediatric Gastroenterology program

Multiple locations: general phone: (313) 745-KIDS or toll-free at (888) 362-2500

3950 Beaubien Boulevard
Detroit, MI 48201
(313) 745-KIDS

45250 Cherry Hill Road
Canton, MI 48187
(734) 397-6270

25325 Ford Road
Dearborn, MI 48128
(313) 274-3655

29120 Franklin Road
Southfield, MI 48034
(248) 351-7671

350 West Big Beaver Rd
Troy, MI 48084
(248) 524-7180

42700 Garfield Road
Clinton Township, MI 48038
(586) 532-3401

**B) Ascension St. John Children's Center Pediatric
Gastroenterology
Multiple locations:**

22201 Moross Rd STE 270
Detroit, MI 48236
(313) 343-3481

17900 23 Mile Rd #101
Macomb, MI 48044
(586) 868-9010

26750 Providence Pkwy #210
Novi, MI 48374
(248) 465-5300

Your appeal and all clinical information were reviewed by a Meridian Medical Director. The reviewer is a(n) M.D. who is board certified in Internal Medicine and Pediatrics. The reviewer was not involved in the original decision. Meridian is keeping the first denial decision after this review.

Exhibit A, pages 111-113

14. On November 20, 2023, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the request for hearing filed in this matter. (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) in effect at the time of the services at issue in this case, 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 review criteria (**revised 10/1/23**) 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, 2023 version
Medicaid Health Plan Chapter, page 1
(internal highlighting omitted)*

As allowed by the above policy and its contract with the Department, the MHP has developed its own prior authorization requirements and utilization management review criteria; and, with respect to out-of-state and out-of-network services, Respondent's criteria states in part:

Policy/Criteria

- I. It is the policy of Meridian Health affiliated with Centene Corporation® that out of network and non-emergent out of state services are medically necessary for the following indications:

A. Mental Health Services:

- i. Meridian is only responsible for coverage of outpatient mental health services. All other mental health services are not covered; they are carved out to the Michigan Prepaid Inpatient Health Plans (PIHP).
- ii. Out of network services that do not require prior authorization:
 1. Emergency Care up to the point of stabilization
 2. Urgent Care
- iii. Out of Network services that require prior authorization:
 1. Post-stabilization services
 2. All other services

B. Out of Country Services:

- i. Requests for items or services located outside of the United States are not a covered benefit, per Federal Regulation 42 USC 1396a (80), <https://www.ssa.gov/OPHome/ssact/title19/1902.htm>.

C. Out of Network Services that require prior authorization:

- i. Post-stabilization services
- ii. All other services

D. Out of Network/Out of State services that are eligible for coverage without prior authorization:

- i. Emergency care up to the point of stabilization, including Urgent care
- ii. Emergency admissions (notification is required within one business day)
- iii. Behavioral Health Emergency Services and Emergency Admissions

E. Additional Out of Network services that are eligible for coverage without prior authorization:

- i. Family planning services (does not include pregnancy terminations)
- ii. Preventative services
- iii. Services delivered when a member is in the Continuity of Care period
- iv. PCP or Specialist visits

If the above conditions do not exist, prior authorization is required

* * *

H. Out of State, Out of Network: All of the following criteria must be met for coverage of out of state, out of network services:

- i. Services requested must be benefit eligible
- ii. Services requested must be medically necessary and are subject to applicable clinical criteria review
- iii. The out of state provider must be licensed and/or certified by the appropriate standard setting authority
- iv. The out of state provider must agree to accept payment based on the contracted state's Medicaid fee screen; and
- v. One or more of the following:
 1. The member's health would be endangered if s/he were required to travel to the applicable contracted state
 2. The services requested are not available in the State or borderland areas

Exhibit A, pages 125-126

Moreover, prior authorization requirements and utilization management review criteria are consistent with the Department's policies as outlined in the applicable version of the MPM:

2.7 OUT-OF-NETWORK SERVICES [RE-NUMBERED 7/1/23]

2.7.A. PROFESSIONAL SERVICES [RE-NUMBERED 7/1/23]

With the exception of the following services, MHPs may require out-of-network providers to obtain plan authorization prior to providing services to plan enrollees:

- Emergency services (screening and stabilization);
- Family planning services;
- Immunizations;
- Communicable disease detection and treatment at local health departments;
- Child and Adolescent Health Centers and Programs (CAHCP) services;
- Tuberculosis services; and
- Certain MIHP services (refer to the Maternal Infant Health Program Chapter for additional information).

MHPs reimburse out-of-network (non-contracted) providers at the Medicaid fee-for-service (FFS) rates in effect on the date of service.

*MPM, October 1, 2023 version
Medicaid Health Plan Chapter, page 6*

Here, Respondent denied Petitioner's request for out-of-state, out-of-network services pursuant to the above policies and on the basis that the any medically necessary services are available within both the State of Michigan and Respondent's network of providers.

In appealing that decision, Petitioner has the burden of proving by a preponderance of the evidence that Respondent erred. 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 record in this case, Petitioner has failed to meet her burden of proof and Respondent's decision must therefore be affirmed.

Petitioner's representative consistently testified that Petitioner needs to be seen at a motility clinic in Cincinnati, Ohio, that is outside of Respondent's network of providers because Petitioner needs treatment at a motility clinic; there is only one such clinic in the State of Michigan; and that Michigan clinic negligently treated Petitioner in the past, with Petitioner's representative subsequently filing a lawsuit against that clinic and unwilling to have Petitioner treated there.

However, the prior authorization itself offers no such basis, or any basis for that matter, for the requested for out-of-state, out-of-network services in Ohio. The request is for office visits in Ohio, but there is no explanation for why such services are needed or why they cannot be provided within Respondent's network in the State of Michigan.

There was some medical documentation attached to the prior authorization request, but that documentation completely fails to support the need for the requested services. For example, while the January 20, 2023, progress note from Dr. Gebara mentioned the possibility of Petitioner undergoing a motility evaluation at a center in Ohio, the subsequent note from Dr. Gebara, dated May 26, 2023, expressly found that Petitioner was evaluated in Cincinnati, with small colonic motility studies completed and the results normal, and the plan of treatment did not identify the need or desire for any repeat visit. Similarly, the most recent progress note, from Dr. Ayas and dated August 30, 2023, identified recommended treatment with no mention of a need for treatment out-of-state or outside of Respondent's network.

Additionally, while Petitioner's representative did file an Internal Appeal reiterating her claims, she failed to support that appeal with any medical documentation or letter of medical necessity from Petitioner's doctor(s).

Moreover, Respondent gathered some medical documentation on its own from Petitioner's medical providers when conducting the Internal Appeal review, and, as credibly testified to by Respondent's reviewing physician, nothing in that documentation appears to support the prior request.

Petitioner's case therefore appears to rest solely on her representative's testimony regarding what Petitioner's doctor verbally told her and the undersigned Administrative Law Judge does not find that testimony credible given the lack of evidence in support of it, even within the prior authorization request itself, and Respondent's witness' testimony that she was told something different.

Additionally, even if Petitioner's representative's testimony was credible, the undersigned Administrative Law Judge would still find it insufficient given the lack of support for the request. Respondent is not required to guess what the reason or reasons for a prior authorization request are and, if the requesting doctor believed that Petitioner needed out-of-network services in the State of Ohio, then he needed to say so and explain the basis for the request in writing or to Respondent.

Accordingly, for the reasons discussed above, Petitioner has failed to meet her burden of proof and Respondent's decision must therefore be affirmed.

To the extent Petitioner has additional or updated information to provide in support of the request for out-of-state, out-of-network services, then she can always have another prior authorization request submitted in the future along with that information. With respect to the decision at issue in this case however, Respondent's decision must be affirmed given the available information and applicable policies.

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/sj



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

PROOF OF SERVICE

I certify that I served a copy of the foregoing document upon all parties, to their last known addresses in the manner specified below, this 31st day of January 2024.

S. James

S. James

**Michigan Office of Administrative
Hearings and Rules**

Via Electronic Mail:

Community Health Representative
Katie Feher
Meridian Health Plan of Michigan Inc.
Detroit, MI 48244
Katie.feher@CENTENE.com

DHHS Department Contact
MDHHS Managed Care Plan Division
Lansing, MI 48933
MDHHS-MCPD@michigan.gov

Via First Class Mail:

Authorized Hearing Representative

[REDACTED]

[REDACTED] MI [REDACTED]

Petitioner

[REDACTED]

[REDACTED] MI [REDACTED]