



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: January 22, 2024
MOAHR Docket No.: 23-009286
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 42 CFR 431.200 *et seq.*, and upon Petitioner's request for a hearing.

After due notice, a telephone hearing was held on January 18, 2024. [REDACTED] Petitioner's Son and Authorized Hearing Representative, appeared on behalf of Petitioner. Leigha Klaver, Appeals Review Officer, appeared on behalf of the Respondent, Department of Health and Human Services (DHHS or Department). Dr. David Wartinger, testified as witnesses for the Department.

Exhibits:

Petitioner None
Department A – Hearing Summary

ISSUES

Did the Department properly deny Petitioner's prior authorization requests for Botox 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 an Emergency Services Only (ESO) Medicaid beneficiary who has history of head tremors and dystonia that began in approximately 2021, following a bout of Covid. (Exhibit A; Testimony.)

2. Prior to December 9, 2023, Petitioner had a trial of Botox Injections that did not provide relief. (Exhibit A; Testimony.)
3. On December 9, 2023, the Department received from the Regents of University of Michigan, a request for Botox Injections on behalf of Petitioner. (Exhibit A; Testimony.)
4. On December 13, 2023, the Department sent Petitioner and the Regents of University of Michigan a Notification of Denial. The notice indicated the request was denied as a result of Petitioner having ESO Medicaid coverage and that coverage being limited to labor and delivery services, and those services necessary to treat **emergency** conditions. The notice went on to indicate the medical records provided indicated a previous trial of Botox had been tried that did not result in any improvement in symptoms. (Exhibit A; Testimony.)
5. On December 19, 2023, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the request for hearing filed by Petitioner in this case. (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 statutes, the Social Welfare Act, the Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

Medicaid covered benefits are addressed for the practitioners and beneficiaries in the Medicaid Provider Manual (MPM) and, with respect to ESO Medicaid coverage the MPM states in part:

SECTION 3 - COVERAGE

ESO Medicaid Coverage is limited to labor and delivery services, and those services necessary to treat emergency conditions. The following services are **not** covered under this benefit:

- Preventative services
- Follow-up services related to emergency treatment (e.g., removal of cast, follow-up laboratory studies, etc.)
- Treatment of chronic conditions (e.g., chemotherapy, etc.)
- Sterilizations performed in conjunction with delivery

- Organ transplants
- Pre-scheduled surgeries¹

Here, as discussed above, the Department denied Petitioner's request for Botox Injections as a result of the injections not being a covered benefit under Petitioner's ESO Medicaid coverage. Specifically, the treatment being requested is to treat a condition the Petitioner has suffered from since at least 2021 (chronic condition), and there is no indication the treatment is being pursued to treat an emergency condition.

In appealing the denials, Petitioner bears the burden of proving by a preponderance of the evidence that the Department erred. Moreover, the undersigned Administrative Law Judge is limited to reviewing the Department's decision in light of the information available at the time the decision was made.

Petitioner did not dispute the condition being treated or provide any evidence to show that it was not chronic in nature.

Given the record and applicable policy in this case, Petitioner has failed to meet that burden of proof with respect to the prior authorization request; and the Department's decisions must therefore be affirmed.

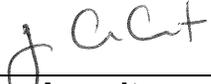
DECISION AND ORDER

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

IT IS THEREFORE ORDERED that:

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

CA/pe



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

¹ MPM, Emergency Services Only Medicaid, October 1, 2023, p 3.

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:

Agency Representative

Leigha Klaver
MDHHS Appeals Section
P.O. Box 30807
Lansing, MI 48909
Klaverl@michigan.gov

DHHS Department Contact

Gretchen Backer
MDHHS
400 S. Pine, 6th Floors
Lansing, MI 48909
MDHHS-prd-hearings@michigan.gov

DHHS Department Representative

Mary Carrier
MDHHS Appeals Section
P.O. Box 30807
Lansing, MI 48909
MDHHS-appeals@michigan.gov

Via First Class Mail:

Petitioner

[REDACTED]
[REDACTED] MI [REDACTED]

Authorized Hearing Representatives

[REDACTED]
[REDACTED] MI [REDACTED]