QA

[redacted]	*	**BEFORE EMILY DANEKER,**
APPELLANT	*	**AN ADMINISTRATIVE LAW JUDGE**
v.	*	**OF THE MARYLAND OFFICE**
MARYLAND DEPARTMENT OF	*	**OF ADMINISTRATIVE HEARINGS**
HEALTH	*	**OAH No.: MDH-MCP-012-18-26173**

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DECISION

STATEMENT OF THE CASE
ISSUE
SUMMARY OF THE EVIDENCE
FINDINGS OF FACT
DISCUSSION
CONCLUSION OF LAW
ORDER
REVIEW RIGHTS

STATEMENT OF THE CASE

The Maryland Department of Health (Department)[1] contracted with Amerigroup Maryland, Inc. (Amerigroup), a Managed Care Organization (MCO), to arrange for the provision of health care services, on a managed care basis, to individuals enrolled in the Maryland Medical Assistance (MA) Health Choice Program.[2] On or about June 18, 2018, a prior authorization request for the medication [redacted] was filed with Amerigroup on behalf of [redacted] (Appellant). On June 20, 2018 and July 9, 2018, Amerigroup denied the prior authorization request. On or about July 19, 2018, the Appellant filed a Request for State Fair Hearing with the Department. Code of Maryland Regulations (COMAR) 10.01.04.02. On August 20, 2018, the

[1] Prior to July 1, 2017, the Department was known as the Department of Health and Mental Hygiene, and some of the documents in evidence predate this name change. For convenience, I consistently refer to the agency as the Department.

[2] The Health Choice Program is referred to as the "Maryland Medicaid Managed Care Program." *See* Code of Maryland Regulations 10.09.11.02B(25).

Department forwarded the hearing request to the Office of Administrative Hearings (OAH) to conduct a hearing.

I held the requested hearing on October 19, 2018 at the OAH's offices in [redacted] Maryland. COMAR 10.01.04.06. The Appellant represented himself. [redacted] RN, with Amerigroup, represented the Department.

The Administrative Procedure Act, the Procedures for Fair Hearing Appeals under the Maryland State MA Program, and the Rules of Procedure of the OAH govern the procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2018); COMAR 10.01.04; COMAR 28.02.01.

ISSUE

Did the Department erroneously deny the Appellant's prior authorization request for the medication [redacted]?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on the Department's behalf:

MCO Ex. 1 - Fair Hearing Witness List & Case Summary, with the following attachments:
- Clinical Criteria for [redacted] Therapy, undated
- [redacted] Management Plan (blank form)
- [redacted] Enhanced Management Plan (blank form)
- [redacted] Prior Authorization Form (blank form)
- Letter from the Department to Providers, dated December 10, 2015
- [redacted] Treatment Prior Authorization Policy, Prospective Approval of [redacted] Medications, undated
- Letter from the Department to Providers, dated December 10, 2015
- [redacted] Treatment Prior Authorization Form (blank form)

MCO Ex. 2 - Maryland Medicaid [redacted] Treatment Synopsis, received June 18, 2018; [redacted] Treatment Plan, received June 18, 2018; Prior Authorization Form: Medical Injectables, dated June 18, 2018; Maryland Pharmacy Prior Authorization Form, dated May 29, 2018

The Appellant did not offer any documents into evidence.

Testimony

Ms. [redacted] testified on behalf of the Department. The Appellant testified in his own behalf.

FINDINGS OF FACT

Having considered the evidence presented, I find the following facts by a preponderance of the evidence:

1. Amerigroup is an MCO and has contracted with the Department to provide managed care health care services to individuals enrolled in the Maryland MA Health Choice Program.

2. The Appellant is an eligible participant in the Maryland MA Health Choice Program through Amerigroup.

3. In February 2014, the Appellant was diagnosed with [redacted] and treated with [redacted] and [redacted] After treatment, his viral load was undetectable, but he had side effects from the treatment.

4. In April 2018, the Appellant was diagnosed with a recurrence/re-infection of [redacted] ("chronic active [redacted]"). The Appellant is also [redacted] In light of the history of side effects and the Appellant's medical status, his doctor, [redacted] M.D., recommended treatment with the medication, [redacted]

5. The Department's Clinical Criteria for [redacted] drug therapy requires a [redacted] biopsy or other accepted test demonstrating a [redacted] score of F2 or greater.

6. On or about June 18, 2018, Dr. [redacted] submitted a prior authorization request to Amerigroup for the use of [redacted] The request did not include medical notes or laboratory reports.

7. In the prior authorization request, Dr. [redacted] stated that the Appellant had no [redacted] and a [redacted] score of F0. The request did not contain supporting documentation of the Appellant's [redacted] score.

8. On or about June 20, 2018, the request for prior authorization of [redacted] was denied for lack of documentation.

9. On July 2, 2018, the Appellant appealed the June 20, 2018 determination.

10. On or about July 2, 2018, Amerigroup requested that Dr. [redacted] provide additional documentation by July 6, 2018.

11. Dr. [redacted] never provided the requested documentation.

12. On July 9, 2018, Amerigroup again denied the request for [redacted] based on a lack of required documentation and on the Appellant's failure to meet the required minimal [redacted] score of F2.

DISCUSSION

The Department denied the Appellant's request for preauthorization of [redacted] The Appellant bears the burden of proving that he qualifies for the requested medication. *Comm'r of Labor & Indus. v. Bethlehem Steel Corp.*, 344 Md. 17, 34 (1996). The standard of proof is a preponderance of the evidence. Md. Code Ann., State Gov't § 10-217 (2014). To prove something by a "preponderance of the evidence" means "to prove that something is more likely so than not so[,]" when all of the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002). I find that the Appellant has not met his burden for the reasons set forth below.

An MCO is required to provide medically necessary pharmaceuticals. COMAR 10.09.67.04A, B. An MCO is also required to adhere to the Department's standards for prior authorization of medications. COMAR 10.09.67.04I; *see also* 42 U.S.C. § 1396r-8(d)(1), (5) (Supp. 2018). In regard to drug therapy for [redacted] the Department requires prior authorization of certain medications, including [redacted] (*See* MCO Ex. 1.) Pursuant to the Department's prior authorization requirements, a patient must have a treatment plan and meet the following criteria:

- Must have chronic [redacted] and [redacted] genotype and sub-genotype documented;
- Patients who have prior exposure to DAA therapy must have a pre-DAA genotype and post-DAA genotype documented (Appendix B);
- [redacted] RNA quantitative within 90 days of application for therapy;
- [redacted] biopsy or other accepted test (Appendix A) demonstrating [redacted] corresponding to [redacted] score of greater than or equal to 2;
- Previous [redacted] treatment history and outcome;
- [redacted] status and, if [redacted] current antiretroviral regimen and degree of viral suppression;
- Adherence evaluation: Providers must assess and document the patient's ability to adhere to therapy; [and]
- Drug resistance testing as indicated.

(MCO Ex. 1.)

In support of the denial of the Appellant's request for [redacted], Ms. [redacted] relied upon the Department's prior-authorization criteria, as set forth above, and the documents submitted by the Appellant's doctor. The Appellant's doctor submitted a request for prior authorization of [redacted] but did not include medical notes or lab work with the request and did not complete a treatment plan. (*See* MCO Ex. 2.) That documentation was never provided. The Appellant's doctor reported that the Appellant had no [redacted] and that his stage was F0. (*Id.*)

The Appellant did not contest the Department's criteria and he did not offer any additional documentation from his doctor. The Appellant did not contend that he had a [redacted] score of F2 or greater.

The Appellant explained that since being re-diagnosed in April 2018, he has been more sluggish and tires easily. His condition has not improved on its own and, having researched [redacted] after his doctor recommended it, the Appellant believes [redacted] would be helpful to his condition. The Appellant further testified that he works a physically demanding job and is in a probationary period and believes it will be difficult for him to keep up at his job without the [redacted] medication to treat his [redacted]

While I am sympathetic to the Appellant's situation and do not dispute that he may receive benefit from [redacted] the limited documentation submitted on the Appellant's behalf reveals that he does not meet the [redacted] score criteria of F2. Further, his doctor did not submit the required laboratory and medical records or completed treatment plan to support the Appellant's request for prior authorization of [redacted] As the Appellant has not established that he meets the Department's criteria for prior approval of [redacted] I must uphold the denial of prior authorization for the medication.

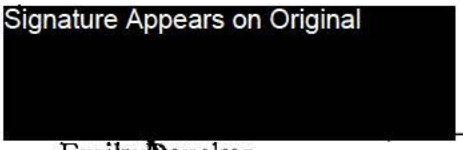
CONCLUSION OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Department did not err in denying the Appellant's prior authorization request for the medication, [redacted] COMAR 10.09.67.04I; *see also* 42 U.S.C. § 1396r-8(d)(1), (5) (Supp. 2018).

ORDER

I hereby **ORDER** that the determination of the Maryland Department of Health be

AFFIRMED.



November 19, 2018
Date Decision Mailed

Emily Daneker
Administrative Law Judge

REVIEW RIGHTS

This is the final decision of the Maryland Department of Health. A party aggrieved by this final decision may file a written petition for judicial review with the Circuit Court for Baltimore City, if any party resides in Baltimore City or has a principal place of business there, or with the circuit court for the county where any party resides or has a principal place of business. Md. Code Ann., State Gov't § 10-222(c) (Supp. 2018). The original petition must be filed in the circuit court within thirty (30) days of the date of this decision, with a copy to David Lapp, Office of the Attorney General, Suite 302, 300 W. Preston St., Baltimore, MD 21201. Md. Rules 7-201 through 7-210.

The petition for judicial review should identify the Maryland Department of Health, which administers the Medicaid program, as the agency that made the decision for which judicial review is sought. The address of the Maryland Department of Health should be included on the petition: 201 W. Preston St., Room 511C, Baltimore, MD 21201.

A separate petition may be filed with the court to waive filing fees and costs on the ground of indigence. Md. Rule 1-325. No fees may be charged to Medical Assistance Program recipients, applicants, or authorized representatives for transcription costs or for preparation or delivery of the record to the circuit court. The Office of Administrative Hearings is not a party to the judicial review process.

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Copies Mailed To:

[redacted]