

[REDACTED]

APPELLANT

v.

MARYLAND DEPARTMENT OF
HEALTH

* BEFORE SUSAN A. SINROD,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH No.: MDH-MCP-012-18-17914

* * * * *

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 (MDH) contracted with Priority Partners Managed Care Organization (Priority Partners) 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. On May 2, 2018, the MDH informed [REDACTED] (Appellant) that on April 9, 2018, Priority Partners denied her health care provider's request for lumbar facet block injections because they are not medically necessary. On or about May 14, 2018, the Appellant filed a Request for Fair Hearing with the MDH. Code of Maryland Regulations (COMAR) 10.01.04.02. On June 4, 2018, the MDH forwarded the hearing request to the Office of Administrative Hearings (OAH) to conduct a hearing.

I conducted the hearing on November 30, 2018 at the OAH- [REDACTED] [REDACTED] Street, [REDACTED] Maryland. COMAR 10.01.04.06. The Appellant was present and represented herself. Erin Reilly, Assistant Attorney General, represented the MDH.

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 MDH properly deny the Appellant's request for facet block injections?

SUMMARY OF THE EVIDENCE

Exhibits

The MDH submitted the following exhibits, which were admitted into evidence:

- MDH Ex. #1- Priority Partners Appeal Decision, dated April 24, 2018, with medical records attached, of varying dates; Notice of Denial Decision, dated September 1, 2017, sent to the Appellant and three health care providers; Notice of Denial of Services, dated April 2, 2018; Fax Transmittal from [REDACTED] RN, ONC, UM Nurse to [REDACTED] at [REDACTED] dated July 11, 2018
- MDH Ex. #2- MRI Report from [REDACTED] LLC, dated September 14, 2017
- MDH Ex. #3- Johns Hopkins HealthCare Medical Policy: Back Pain-Invasive Procedures, effective March 6, 2015
- MDH Ex. #4- Updated Hearing Summary, undated

The Appellant submitted the following exhibit, which was admitted into evidence:

- App. Ex. #1- Therapeutic radiofrequency lumbar facet rhizotomy report from [REDACTED] dated August 6, 2018

Testimony

The MDH presented the testimony of Dr. Tiffany Wedlake, who was accepted as an expert witness in medicine. The Appellant testified on her own behalf.

FINDINGS OF FACT

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

1. Priority Partners is a Managed Care Organization (MCO) and has contracted with the MDH 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 Priority Partners.

3. Certain procedures and medications require prior authorization before administration. Facet block injections require prior authorization.

4. The Appellant suffers from multiple degenerative and bulging disc issues in her back. In the L5-S1 disc level, she suffers from left lateral disc herniation with degenerative facet joint changes and left lateral recess stenosis with nerve root compression on the left S1 nerve root. As a result of her back problems, the Appellant suffers from significant and constant pain.

5. The Appellant has received facet block injections in the past and has benefitted from pain relief as a result. She received facet block injections every six months for a period of time previous to, and up until May 2017.

6. On March 15, 2018, a doctor from [REDACTED] ordered that the Appellant receive a facet block injection for pain in the L5-S1 disc level.

7. The MDH Clinical Criteria for determining whether facet block injections are medically necessary requires that there be an absence of nerve root compression and documented 50% pain reduction if injections were previously administered.

8. A Magnetic Resonance Imaging study (MRI) dated September 14, 2017 revealed that the Appellant suffers from nerve root compression of the L5-S1 disc level.

DISCUSSION

The MDH denied the Appellant's medical provider's request for facet block injections. The Appellant bears the burden of proving that she qualifies for the facet block injections. *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).

An MCO is required to provide medically necessary pharmaceuticals. COMAR 10.09.67.04A, B. An MCO is also required to adhere to the MDH standards for prior authorization of medications. COMAR 10.09.67.04I; *see also* 42 U.S.C. § 1396r-8(d)(1), (5) (Supp. 2018).

Dr. Wedlake testified that she works for the MDH and oversees MCOs and Maryland MA. She reviewed Priority Partners' denial of the Appellant's facet block injections and rendered her denial decision on May 2, 2018. Dr. Wedlake presented the Johns Hopkins Healthcare criteria for such injections, which Priority Partners relied upon and which she testified mirrors the State criteria. *See* MDH Ex. #3. According to Dr. Wedlake, she denied the facet block injections because that treatment did not meet medical criteria and is therefore not medically necessary pursuant to the applicable guidelines.

The medical criteria for facet block injections, set forth as Johns Hopkins HealthCare, *Medical Policy-Back Pain-Invasive Procedures*, Policy Number CMS18.05, effective March 5, 2015 and reviewed March 4, 2016 and December 1, 2017, states the following:

1. **Facet Blocks**
 - A. When benefits are provided under the member's contract, [Johns Hopkins Health Care] considers fact blocks medically necessary for the diagnosis of facet pain in persons with moderate to severe

chronic back or neck pain lasting more than 3 consecutive months when ALL of the following criteria are met:

1. Non-thoracic, low back (lumbar/sacral), neck (cervical), or sacroiliac pain, suggestive of facet joint origin as evidenced by absence of nerve root compression as documented in the medical record history, physical or radiographic evaluations, AND;
2. Pain has failed to respond to three months of conservative management which may consist of therapies such as physical therapy, manipulation, nonsteroidal anti-inflammatory medications, acetaminophen, or a home exercise program.
3. A maximum of 1 set of diagnostic facet joint injections per spinal region (cervical or lumbar/sacral) per side are considered medically necessary as a diagnostic test of facetogenic back pain and a prognostic test for radiofrequency ablation therapy.
- ...
5. If 50% pain reduction is documented with the first set of injections using the visual analog scale...before and after the procedure, injections may be repeated once to confirm the diagnosis of facetogenic back pain at least one week (ideally two weeks) after the first block.

- ...
- B. Unless specific benefits are provided under the member's contract, [Johns Hopkins Healthcare] considers facet joint injections...experimental and investigational as a therapeutic intervention (non-diagnostic) for back and neck pain and for all other indications, as the effectiveness of this modality, other than as a diagnostic tool, has not been established and they do not meet Technology Evaluation Criteria (TEC) #2-5.

MDH Ex. #3.

In rendering her determination to deny the facet block injections, Dr. Wedlake reviewed the information that Priority Partners received from the Appellant's medical providers, including medical records and the MRI report. According to Dr. Wedlake, the Appellant received an initial facet block injection in May 2017. However, the September 14, 2017 MRI revealed that there was a "mass effect on nerve root," which Dr. Wedlake equated to nerve root compression and said it causes pain similar to a pinched nerve. Dr. Wedlake explained that on the Appellant's left side, the disc is herniated and blocking a nerve opening which is pushing on the nerve; this

constitutes the mass effect or nerve root compression discussed in the MRI report. She described that this causes radiating pain to the leg and big toe, and can cause numbing and tingling as well. According to Dr. Wedlake, per the applicable policy, in order for a facet block injection to be considered medically necessary, there must be an *absence* of nerve root compression. She explained that the reason for this limitation is that the nerve root compression may be the actual cause of the pain, rendering the facet block injection ineffective.

Dr. Wedlake explained further that, as the Johns Hopkins Healthcare Policy states, if there is no other obvious cause of pain, one series of facet block injections can be administered to assess if the if the pain truly originates from the facet joint. Dr. Wedlake said that the Appellant's May 2017 facet block injection was diagnostic. According to Dr. Wedlake, the May 2017 facet block injection was administered prior to the September 2017 MRI; thus, it was prior to knowledge of the nerve root compression. Dr. Wedlake also reviewed the Appellant's subjective reports of her pain level at post-injection visits, and said that the Appellant's pain was never relieved by 50%, also disqualifying the facet block injections as medically necessary. *See* MDH Ex. #3.

The Appellant testified that she has struggled with back pain for a long time. She said that her facet block injections were originally approved in 2016. Her doctor told her that the facet block injections were the only solution that would provide the ability for her to function with some increased quality of life; she is not a surgical candidate. The Appellant insisted that the nerve root compression has existed for years; yet, she still received the facet block injections every six months for a period of time. Then, after the MRI in September 2017, when it was time for her to have her six month injection in Spring 2018, Priority Partners denied the request. The Appellant maintained that the facet block injections bring her significant relief from her pain and allow her quality of life she does not otherwise have. When Priority Partners denied the facet

block injections, she went for a radiofrequency ablation, which was extremely painful and did not provide her any relief. App. Ex. #1. She testified she will never endure that procedure again. The Appellant disagreed with Dr. Wedlake; she insisted that the facet block injections resulted in a reduction of her pain of at least fifty percent or more. The Appellant recognizes that she will never be pain free; she is just hoping for the relief that the facet block injections have brought her in the past.

After review of the Appellant's medical records, it is clear that Dr. Wedlake's testimony was not entirely correct. The report from [REDACTED] dated September 5, 2017, said that the Appellant had been receiving facet injections every six months. MDH Ex. #1. After the MRI in September 2017, everything changed, and Priority Partners questioned the medical necessity of the facet block injections, because of the existence of nerve root compression on the L5-S1 disc level. The medical records that the MDH submitted indicate that the Appellant reported significant relief from the facet injections. See MDH Ex. #1, October 4, 2017 Preauthorization form from [REDACTED]. Other medical records from [REDACTED] indicated that after the May 2017 facet block injection, the Appellant subjectively rated her pain level as anywhere from "6" to "9" on a scale of one to ten, ten being the most severe pain. However, there is no evidence of the Appellant's baseline pain level from the medical records the MDH provided, in order to assess the exact percentage of reduction of pain the Appellant experienced after receiving the facet block injections.

The Priority Partners' denial letter also refers to the Appellant's facet block injection in May 2017 as her first set of injections. As stated, the medical records that the MDH provided established that the Appellant received the facet injections every six months prior to May 2017 for at least some period of time, and she experienced relief from the injections. Additionally, I found the Appellant's testimony to be credible that the nerve root compression has existed for a

quite some period of time, and was she still received the facet block injections regardless. There is no previous MRI in the record.

I did not consider the Appellant's subjective descriptions of pain as set forth in the medical records, wherein the Appellant described her pain as a numerical value, to be of much evidentiary value. This information was simply unconvincing regarding whether or not the facet block injections reduced her pain by fifty percent; the records do not date back far enough to provide a baseline for the Appellant's pain. Additionally, I found the Appellant's testimony to be credible that she has received tremendous relief from the facet block injections and they improved her quality of life.

There are some patent inconsistencies between Dr. Wedlake's testimony and the medical records that the MDH presented into evidence. Regardless, I found Dr. Wedlake's overall testimony as an expert witness to be convincing that the Johns Hopkins Healthcare policy mirrors the State plan. COMAR 10.09.67.01 and 10.09.67.04 require the MCO to provide services and pharmaceuticals that are medically necessary under the State plan, and as seen above, where there is the presence of nerve root compression, facet injections are not considered to be medically necessary. MDH Ex. #3. Dr. Wedlake testified that the reason for this restriction is because it is likely the nerve root compression is the actual reason for the pain, and the facet block injections would not address nerve root compression pain. Dr. Wedlake said that because the Appellant's pain was not 50% improved after what she called the "first" facet injection in May 2017, no further injection was warranted pursuant to medical policy. Dr. Wedlake also referred to the Johns Hopkins Healthcare medical policy, which, as set forth above, considers the facet block injections "experimental" and "investigational" as a therapeutic intervention. MDH Ex. #3.

Unfortunately, despite the Appellant's convincing testimony that the facet block injections greatly improved her pain quality of life, the Johns Hopkins Health Care policy, mirroring the State plan, sets forth that such injections are not medically necessary with the Appellant's medical presentation. It is clear that previous approval of the injections did not comport with policy regarding medical necessity given the presence of nerve-root compression. MDH Ex. #3. As a result, I have no choice but to uphold the decision of the MDH to deny the facet block injections at this time.

CONCLUSION OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the MDH properly denied the Appellant's request for facet block injections. COMAR 10.09.67.04I; *see also* 42 U.S.C. § 1396r-8(d)(1), (5) (Supp. 2018); Johns Hopkins HealthCare, *Medical Policy-Back Pain-Invasive Procedures*, Policy Number CMS18.05, effective March 5, 2015 and reviewed March 4, 2016 and December 1, 2017 (MDH Ex. #3).

ORDER

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

AFFIRMED.

December 18, 2018
Date Decision Mailed

SAS/ej
#177191

Signature Appears on Original

Susan A. Sinrod
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.

Copies Mailed To:

[REDACTED]

[REDACTED]

[REDACTED]