

**OHIO DEPARTMENT OF JOB AND FAMILY SERVICES
BUREAU OF STATE HEARINGS**

In the matter of:

<u>Case Number:</u>	<u>County:</u>	
5011084604	HAMILTON	
<u>Appeal:</u>	<u>Program:</u>	<u>Disposition:</u>
1444662	MED	OVERRULED
No Compliance Required		
Decision Date:	02/25/2009	
Request Date:	10/24/2008	
Hearing Officer:	TINA DYEHOUSE	

State Hearing Decision

ISSUE SECTION:

Issue #1 – 1444662:

The Medicaid program has a list of covered drugs. To obtain a drug that is not on the list, it must be medically necessary for treatment. On 9-18-08, Amerigroup, a managed care plan, denied the Appellant's request for the prescription drug Meridia. The Appellant receives Medicaid from the Hamilton County Department of Job and Family Services (Agency).

Amerigroup contended that the drug did not meet their requirements for authorization and was not medically necessary, because the Appellant's doctor did not verify weight loss. The preponderance of the evidence established that Amerigroup was within their guidelines for utilization and that the doctor did not submit verification that the drug is medically necessary with the request for prior authorization. The denial was affirmed.

PROCEDURAL MATTERS:

On 9-18-08, Amerigroup mailed prior notice. On 10-24-08, the Bureau of State Hearings received the Appellant's written state hearing request. The hearing was conducted on 1-7-09, by conference call. All participants were sworn in: the Appellant; Sarah Smith, Appellant's attorney, Legal Aid Society of Cincinnati; Ruth Haubner and John Hinton, M.D., Amerigroup; and Lynne Bonner, Hamilton Co. JFS representative. I received the appeal summary on 12-2-08. The hearing was recorded digitally and stored on the network drive.

The hearing record was left open for a day to allow the Appellant and Amerigroup to submit additional exhibits. On 1-7-09, the Appellant's representative sent a letter from the Appellant's doctor to myself and Amerigroup. The letter was marked as exhibit 2. On 1-8-09, Amerigroup sent two additional exhibits regarding their preferred drug program approval and their policy for prescription of Meridia. On 2-17-09, I asked Amerigroup to send the exhibits again, because I did not receive the first fax. I also reminded Amerigroup to send them to the Appellant's representative. The exhibits were marked as exhibits G and H.

FINDINGS OF FACT:

1. The Appellant receives Medicaid from the Hamilton County Department of Job and Family Services (Agency).
2. The Appellant's Medicaid is administered through the Amerigroup managed care plan.
3. On 8-20-08, Amerigroup approved the Appellant for one month of the weight loss drug Meridia. The doctor reported that the Appellant's weight was 273 pounds on 8-20-08.
4. On 9-16-08, the Appellant's doctor requested authorization to refill the Appellant's prescription for the drug Meridia. The doctor reported that on 8-26-08, the Appellant's weight was 277 pounds. The doctor did not provide additional weight information for the Appellant.

CONCLUSIONS OF POLICY:

The Amerigroup representatives contended that further prescription of Meridia did not meet their guidelines. They explained that the only information that they received from the doctor indicated that the Appellant gained four pounds. The doctor did not provide any further documentation and weights with the request for prior authorization.

The Appellant testified that he lost three pounds while taking Meridia. The Appellant provided a letter from his doctor stating that although the Appellant gained weight in the first week, it was because his body either had not adjusted to the medicine or his dosage needed to be increased.

At the hearing, the drug Meridia was discussed as being on the Medicaid formulary. Drugs on the Medicaid formulary are available without prior authorization.¹ A managed care plan may establish a preferred drug list, but they must have approval from the Ohio Department of Job and Family Services to restrict drugs that available on the Medicaid formulary.² But in their follow-up, Amerigroup clarified that Meridia is not on the Medicaid formulary. I also searched the formulary and confirmed that information.

Amerigroup pointed out that their plan for management of the drug Meridia requires participants to lose four pounds during the first four weeks of therapy to be eligible for a reauthorization (exhibit H). They also pointed out the drug literature advises individuals to report to their doctors if they do not lost four pounds in the first month (exhibit C). Here, the evidence established that the information sent to the Amerigroup by the Appellant's doctor showed that he had gained 4 pounds in the first week. In his letter, the doctor contended that a one-week trial was not enough to determine the weight loss effects. But Amerigroup approved Meridia for one month. They used the weight from 8-26-08 to determine eligibility, because that was the only weight provided by the physician. So the request for prior authorization did not meet Amerigroup's policy.

¹ Ohio Admin. Code § 5101:3-9-12, Appendix A (3-20-08)

² Ohio Revised Code § 5111.172

STATE HEARING DECISION CONTINUATION

For prior authorization of a non-covered drug, the Medicaid recipient must establish that a drug is medically necessary.³ If a managed care plan denies a prescription medication, the state hearing looks at both the managed care plan's guidelines for prescribing the drug and the medical necessity rule. Medical necessity is established when services are needed for treatment without which there would be an increase in co-morbid diseases, dysfunction of a body part or organ or significant pain and discomfort.⁴ Here, the doctor verified that the Appellant suffers from obesity and "obesity related issues." The doctor also wrote "without this medicine I suspect Mr. Zulu would suffer increasing healthy dysfunction." (exhibit 2) That would not meet or equal the requirements for medical necessity, because the evidence did not establish that the Appellant suffers from co-morbid diseases that would cause the required pain and discomfort without the drug.

The Appellant's representative pointed out that Amerigroup did not request additional weight information. But there is no statutory requirement for Amerigroup to ask for more information. The Appellant testified that he lost weight overall while taking Meridia. If the Appellant believes that he is eligible, his physician could resubmit the request with additional information. Based on the information submitted here, I find that the Amerigroup denial was within the Medicaid guidelines. The denial is affirmed.

HEARING OFFICER RECOMMENDATIONS:

Issue #1 – 1444662:

Appeal number 1444662 should be OVERRULED.

FINAL ADMINISTRATIVE DECISION AND ORDER:

Issue #1 – 1444662:

Finding the hearing officer's decision to be supported by the evidence, the recommendation shown above is adopted. The appeal is OVERRULED.

Hearing Authority

February 25, 2009

Notice to Appellant

This is the official report of your hearing and is to inform you of the decision and order in your case. All papers and materials introduced at the hearing or otherwise filed in the proceeding make up the hearing record. The hearing record will be maintained by the Ohio Department of Job and Family Services. If you would like a copy of the official record, please telephone the hearing supervisor at the CINCINNATI District hearing section at 1-866-635-3748.

³ Ohio Admin. Code § 5101:3-9-03(C) (2005)

⁴ Ohio Admin. Code § 5101:3-1-01(A) (2002)

STATE HEARING DECISION CONTINUATION

If you believe this state hearing decision is wrong, you may request an administrative appeal by writing to: Ohio Department of Job and Family Services, Bureau of State Hearings, P.O. BOX 182825, Columbus, OH 43218-2825 or fax: (614) 728-9574. Your request should include a copy of this hearing decision and an explanation of why you think it is wrong. Your written request must be received by the Bureau of State Hearings within 15 calendar days from the date this decision is issued. *(If the 15th day falls on a weekend or holiday, this deadline is extended to the next work day.)* During the 15-day administrative appeal period you may request a free copy of the tape recording of the hearing by contacting the district hearings section.

If you want information on free legal services but don't know the number of your local legal aid office, you can call the Ohio State Legal Services Association, toll free, at 1-800-589-5888, for the local number.

Aviso a la Apelante

Esta es la decisión estatal administrativa de su caso. Todos los documentos y materiales presentados como prueba en la vista o de otra manera radicados componen el récord administrativo. El récord administrativo será mantenido por el Ohio Department of Job and Family Services.

Si usted cree que esta decisión estatal administrativa es errónea, usted puede solicitar una apelación administrativa escribiendo al: Ohio Department of Job and Family Services, Bureau of State Hearings, P.O. Box 182825, Columbus, Ohio 43218-2825 o facsímil (614) 728-9574. Su solicitud debe indicar por qué usted piensa que la decisión administrativa es errónea. Usted puede completar la solicitud de apelación incluida con esta decisión. Su solicitud escrita o formulario de apelación tiene que ser recibido por el Bureau of State Hearings dentro de los 15 días calendario desde la fecha en que esta decisión es expedida. (Si el 15to. día recae sobre un fin de semana o un día feriado, esta fecha límite es extendida al próximo día laborable). Durante el período de 15 días de apelación administrativa, usted o su representante pueden solicitar una copia gratuita del récord administrativo y de la grabación de la vista llamando al Bureau of State Hearings al 1-866-635-3748 (seleccione la opción 1 del menú principal).

Si usted quiere información sobre servicios legales gratuitos pero no sabe el número de su oficina local de servicios legales, usted puede llamar al Ohio State Legal Services Association, gratuitamente, al 1-800-589-5888, para el número local.

STATE HEARING DECISION CONTINUATION

Appendix

Exhibits:

Appellant:

1 – State hearing request – 5 pp

2 – Letter from doctor, dated 1-7-09 and page from court decision – 2 pp

Agency:

A – Appeal summary and cover letter – 5 pp

B – Prescription drug information for Meridia

C – Patient information for Meridia – 5 pp

D – Denial letter sent to Appellant, dated 9-18-08 – 2 pp

E – Denial notice with right to state hearing, mailed 9-16-08 – 2 pp

F – Denial letter sent to doctor, dated 9-17-08

G – Authorization and restricted drug list – 7 pp

H – Amerigroup policy for prescription of Meridia – 8 pp