

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 17,948
)
Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department of Prevention, Assistance, Transition, and Health Access (PATH) denying reimbursement under Medicaid for his purchase of brand name Valium. The issue is whether the petitioner met the requirements for prior authorization within the meaning of the pertinent regulations. The following facts are not in dispute.

FINDINGS OF FACT

1. The petitioner is disabled and receives Medicaid. Prior to June 2002 he had received Medicaid coverage for several prescriptions of Diazepam, a generic form of Valium.

2. On June 3 and June 12, 2002 the petitioner's psychiatrist, who is a registered Medicaid provider, wrote prescriptions to the petitioner for brand name Valium. However, although it appears that he was, or should have been, well aware of the Department's generic drug policies under

Medicaid (see infra), the psychiatrist did not seek prior approval for Valium instead of the generic form.

3. When the petitioner went to the pharmacy on those dates to fill the prescriptions for Valium the pharmacy told him (correctly) that Medicaid had not approved coverage. The petitioner elected to pay for the prescriptions out of pocket. He paid \$35.41 for the first prescription on June 3 and \$62.51 for the prescription on June 12.

4. Shortly thereafter, the petitioner switched doctors. On June 20, 2002 the new psychiatrist submitted a prior approval request to the Department for brand name Valium. The Department eventually granted this request, and since that time the petitioner has received Medicaid coverage for brand name Valium.

5. The petitioner's appeal in this matter concerns his request for reimbursement for the prescriptions he paid for himself on June 3 and June 12. Unfortunately, it appears that the petitioner no longer has any relationship with his prior psychiatrist, and he has not provided any explanation why that doctor never sought prior approval from Medicaid for his prescriptions for brand name Valium.

ORDER

The Department's decision is affirmed.

REASONS

Medicaid Manual § M810 and Vermont statute, 18 V.S.A. § 4605, require physicians and pharmacists to provide only the lowest cost generic equivalent drug in stock for any prescription covered by Medicaid. The Department has a policy of providing an exception to this requirement if there is a prior request indicating that the patient has a medical need for a name brand drug over its generic equivalent. The Department has provided forms and instructions to all Medicaid providers regarding such requests.

As noted above, the petitioner's psychiatrist at the time the prescriptions in question were written was a registered Medicaid provider, and there is no evidence or indication that he was unaware of the requirement for prior approval of a name brand exception in order to obtain Medicaid coverage for such prescriptions. This psychiatrist has never provided a medical justification for the prescriptions for Valium that he wrote on June 3 and 12, 2002. Although the subsequent justification provided by another doctor, which the Department eventually approved, might provide a basis to find that the Department

might have approved coverage earlier had a timely request been made, it cannot be concluded that the Department is legally bound to reimburse the petitioner for any prescription written prior to the receipt of a request for prior approval.

Inasmuch as the Department's decision in this matter is in accord with the above statute, policy, and procedures, the Board is bound to affirm. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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