STATE OF VERMONT

HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 18,022
	)	
Appeal of	)	

INTRODUCTION

The petitioner appeals a decision of the Department of Prevention, Assistance, Transition, and Health Access (PATH) denying full coverage of a prescription under the Vermont Health Access Program (VHAP).

FINDINGS OF FACT

1. The petitioner's physician wrote a prescription for him for an anti-fungal medication, Sporanox, which requires him to take one packet daily for seven days and then refrain from taking it for twenty-one days. He was to follow this procedure four times over a period of four months. The petitioner, who is a VHAP recipient, asked PATH for coverage of this medication. He was approved for a twenty-one day period. Under this approval scenario, the petitioner must have the approval renewed every twenty-one days and each time pay a $6.00 co-payment. The petitioner also has a maintenance prescription for Synthroid which PATH allows him to obtain for

one month at a time. The result is the petitioner must also pay a co-payment monthly for this medication.

2. Following the hearing, PATH wrote to the petitioner saying that it had approved twelve weeks (or three months) of Sporanox therapy since this is the “standard of care” and that the need could be re-evaluated for a renewal at the end of three months. PATH would only allow a monthly dispensing of the medication since it is not a “maintenance” prescription but agreed it would only charge one co-pay for the entire prescription.

3. PATH did not specifically respond to the petitioner’s claim that he is required to make monthly co-payments on his Synthroid maintenance prescription.

4. The petitioner is not satisfied with PATH’s response and asked for a decision. He says that he can take the entire prescription within three months because he actually takes the final dose in the thirteenth week. He also says he has already paid four co-pays on the prescription and wants the money back.[1]

[1] The petitioner raised other issues in his responsive letter which were not part of the original hearing. If he is dissatisfied, the petitioner is urged to request an appeal on those matters through the agency or the clerk of the Board.

ORDER

The Department's decision is reversed.

REASONS

Under VHAP Pharmacy regulations, coverage for “prescribed drugs” is made as follows:

> Payment is limited to covered items furnished on written prescription of a duly licensed physician. . . Any drug which is to be used continuously (i.e., daily, twice a day, every other day, etc.) for 30 days or more shall be prescribed and dispensed in an amount sufficient to treat the patient no fewer than 30 days and no more than 90 days at a time except medications which the patient takes or uses on as “as needed” basis. Up to five refills are permitted. If there are extenuating circumstances in an individual case which, in the judgment of the physician, dictate a shorter prescribing period, the supply may be for fewer than 30 days. . . The pharmacist shall not fill a prescription in a quantity different from that prescribed by the physician if payment is to be made by VHAP-Pharmacy, except in an individual case when the quantity has been changed in consultation with the physician.

VHAP 3304

Under these regulations, prescriptions must be filled as written by the physician and the quantity can only be changed in "consultation with the physician." In this case, there is no evidence that the physician was consulted with regard to his prescription for the petitioner and PATH, therefore, is not justified in unilaterally reducing the duration of the prescription. It must be concluded, then, that the petitioner

is eligible, without further restriction or review, for the four-month therapy prescribed by his physician. However, since this medication is to be used on a regular basis (one week on, three weeks off) for a period of more than one month, the petitioner may receive up to but not more than a ninety day supply at any given time. Under VHAP regulations then, he must pay a co-payment each ninety days when the prescription is filled. VHAP 4001.92. The petitioner in this case, is liable for two co-payments for this prescription.

The same is true for the petitioner's maintenance Synthroid prescription. He may receive up to a 90-day supply for this continuously used medication for which he would make one co-payment. To the extent that PATH has limited the duration of his physician-prescribed medications and has restricted him to monthly supplies of his medications with attendant co-payments, its decision should be reversed as not consistent with the above regulation.

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