

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 19,669
)
Appeal of)

INTRODUCTION

The petitioner appeals an action by the Department for Children and Families, Economic Services reducing his Medicaid coverage for the prescription drug Imitrex. The issue is whether the Department had any factual or legal basis to do so.

ORDER

The Department's decision is reversed.

DISCUSSION

The following facts are based on the parties' representations and do not appear to be in dispute. The petitioner has a history of severe and disabling migraine headaches with unknown and unpredictable onset. Pursuant to a settlement of a prior fair hearing in February 2003 the Department provided the petitioner ongoing Medicaid coverage for Imitrex, a self-injected medication prescribed by his doctor. The Department gave the petitioner's pharmacy prior

approval to dispense eight Imitrex "kits" per month. Each kit contained two injections.

On April 11, 2005 the petitioner's pharmacy informed him that their computer indicated that the Department was no longer approving coverage for this medication. Having received no prior notice of this action, the petitioner immediately called the Department, and when he hadn't heard back in a week he filed the instant appeal.

On April 20, 2005, the Department informed the petitioner (apparently in a phone call) that it was granting prior approval for only four kits per month. Following two fair hearing dates that were continued based on the Department's representation that the matter would be "settled", at a hearing held on July 12, 2005, the Department orally informed the petitioner that it had approved only six kits per month.

To date, the Department has provided no written notice of any sort to the petitioner regarding the reduction in prior approval from eight to four, and then six, kits per month. It does not deny the petitioner's representation that nothing has changed in his medical condition or his doctors' assessment of the amount of Imitrex needed to treat it. At the July 12th hearing the hearing officer gave the

Department two weeks to produce any evidence or rationale specific to the petitioner and his condition that would explain or justify the reduction. As of the date of the hearing officer's recommendation in this matter, the Department had provided nothing.¹

The Medicaid regulations clearly require the Department to provide advance written notice to recipients prior to any termination or reduction in Medicaid coverage. W.A.M. § M141. Not only has the Department failed to provide any such notice, it has presented no rationale or justification for its failure to do so.

It has been many decades since the Board has seen the Department engage in such arrogant and unlawful capriciousness. The Department (not to mention the petitioner) should consider itself fortunate that the petitioner did not suffer any detrimental medical consequences due to its actions. One can only hope (however inexplicable) that this case is an isolated incident and that the employee or employees responsible can be admonished without further damage to the Department's credibility and the rights and health of recipients who depend on the

¹ The Department's submissions to the Board dated August 22, 2005, were not considered due to lack of timeliness.

Medicaid program for necessary Medical care. At any rate, absent any timely notice or rationale, the decision reducing the scope of this petitioner's prior approval for Imitrex kits below eight per month must be immediately reversed.²

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² The Department is free to issue any decision in the future based on any new or tardily discovered information, subject, of course, to the petitioner's rights to advance notice and appeal.