STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P.O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

[redacted]

Appellant
______________________/

Docket No. 2009-13188 QHP
Case No. [redacted]
Load No. [redacted]2

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, following the Appellant's request for a hearing.

After due notice, a hearing was held on [redacted]. [redacted] (Appellant) appeared and testified on her own behalf.

Representing [redacted] (hereafter, 'Medicaid Health Plan' or 'MHP') was [redacted] and [redacted].

ISSUE

Did the Medicaid Health Plan properly deny Appellant's request for a Rhinoplasty?

FINDINGS OF FACT

Based upon the competent, material, and substantial evidence presented, I find, as material fact:

1. Appellant is a Medicaid beneficiary who is currently enrolled in [redacted] Plan (MHP).

2. On [redacted], the MHP received a request from [redacted], [redacted] the Appellant's Ear, Nose and Throat specialist, requesting approval for a Septoplasty and Rhinoplasty. The request was reviewed and denied by the MHP's Medical Director, after the MHP determined there was insufficient documentation of attempts by the Appellant to utilize more conservative measures to alleviate her chronic nasal congestion symptoms, such as nasal spray.

3. [redacted] participated in the MHP's internal grievance/appeals process, at which

time he provided the MHP with additional medical documentation. Following the internal grievance/appeals process, the MHP approved coverage for a septoplasty, to repair the Appellant's deviated septum, but upheld its denial of a rhinoplasty, a procedure to address the exterior of the nose, claiming it was "cosmetic" and therefore not a covered service.

4. In a , communication writes:

"… was seen in my office on , complaining of difficulty breathing through her nose and nasal deformity. She is presently years old. She states that when she was -years old she was watching some boys playing football and she was inadvertently hit in the face with the football when one of the boys threw the ball and misjudged. At the time she states she had severe pain and bleeding, and ran home to her mother. Ultimately she required no less than five surgeries to correct her nasal problems. She continues to have difficulty breathing through the nose and nasal deformity, and she requests something be done to help her.

Physical examination reveals marked deformity both to the internal and external nasal architecture. There is a collapse of the entire nasal dorsum with a saddle nose deformity and open roof deformity bilaterally, a collapse of the left side of the nose and a shift of the bony pyramid to the right. There is significant retraction of the nasal columella and internally the septum is markedly deformed deviating to the right side obstructing the right nostril approximately 60 percent.

I feel the patient is a candidate for a post-traumatic functional rhinoplasty and nasoseptal reconstruction." "…"

5. On , the Appellant was examined by , It provides, in pertinent part, as follows:

*"**Physical examination**: Head is normocephalic, atraumatic. No acute distress. Auricles are within normal limits. The tympanic membranes are clear and intact bilaterally. **Nasal examination**: The external nasal exam reveals no obvious deformity. There may [be] a slight rotation of the tip towards the right surface. The tip also may be slightly broadened; however, there is no dorsal hump or depression of the tip. There is no collapse of the nasal valve upon inspiration. The internal nasal examination reveals the possibility of thickened septum with possible deflection towards the right side. The left inferior turbinate does appear slightly enlarged. There is no*

drainage noted. There are no other masses noted.

I did perform a nasal endoscopy using the flexible scope. She does have a right septal spur and enlarged adenoids in her nasopharynx. The left side is very narrowed and the scope was not advanced all the way through. She does have a possibly thickened septum and possible synechia between the turbinates and the septum. Oral cavity and oropharyngal examination reveals 1+ cryptic tonsils. There were no other lesions noted." "…"

6. On , the Appellant submitted her Request for Hearing to the State Office of Administrative Hearings and Rules for the Department of Community Health.

CONCLUSIONS OF LAW

The Medical Assistance Program is established pursuant to Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). It is administered in accordance with state statute, the Social Welfare Act, the Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

On May 30, 1997, the Department received approval from the Health Care Financing Administration, U.S. Department of Health and Human Services, allowing Michigan to restrict Medicaid beneficiaries' choice to obtain medical services only from specified Medicaid Health Plans.

is one of those Medicaid Health Plans.

> The covered services that the Contractor has available for enrollees must include, at a minimum, the covered services listed below (List omitted by Administrative Law Judge). The Contractor may limit services to those which are medically necessary and appropriate, and which conform to professionally accepted standards of care. Contractors must operate consistent with all applicable Medicaid provider manuals and publications for coverage(s) and limitations. If new services are added to the Michigan Medicaid Program, or if services are expanded, eliminated, or otherwise changed, the Contractor must implement the changes consistent with State direction in accordance with the provisions of Contract Section 1-Z.

Article II-G, Scope of Comprehensive Benefit Package. MDCH contract (Contract) with the Medicaid Health Plans, September 30, 2004.

> The major components of the Contractor's utilization management

plan must encompass, at a minimum, the following:

- Written policies with review decision criteria and procedures that conform to managed health care industry standards and processes.
- A formal utilization review committee directed by the Contractor's medical director to oversee the utilization review process.
- Sufficient resources to regularly review the effectiveness of the utilization review process and to make changes to the process as needed.
- An annual review and reporting of utilization review activities and outcomes/interventions from the review.

The Contractor must establish and use a written prior approval policy and procedure for utilization management purposes. The Contractor may not use such policies and procedures to avoid providing medically necessary services within the coverages established under the Contract. The policy must ensure that the review criteria for authorization decisions are applied consistently and require that the reviewer consult with the requesting provider when appropriate. The policy must also require that utilization management decisions be made by a health care professional who has appropriate clinical expertise regarding the service under review.

Article II-P, Utilization Management, Contract,
September 30, 2004.

The MHP's denial in this case is based on its conclusion that the Appellant's request for rhinoplasty is for cosmetic purposes only.

Cosmetic surgery is a covered service, given the following articulated conditions.

13.2 COSMETIC SURGERY

Medicaid only covers cosmetic surgery if PA has been obtained. The physician may request PA if **any** of the following exist: **(Emphasis supplied by ALJ)**

- The condition interferes with employment.
- It causes significant disability or psychological trauma (as documented by psychiatric evaluation).
- *It is a component of a program of reconstructive surgery for congenital deformity or trauma. (Emphasis supplied by ALJ)*
- *It contributes to a major health problem. (Emphasis supplied by ALJ)*

The physician must identify the specific reasons any of the above criteria are met in the PA request.

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A Medicaid beneficiary bears the burden of proving he or she was denied a medically necessary and appropriate service. See, e.g., *J.K By and Through R.K. v Dillenberg*, 836 F Supp 694, 700 (Ariz, 1993). Whether the Appellant satisfied her burden here must be determined in accord with the preponderance of the evidence standard. See, e.g., *Aquilina v General Motors Corp*, 403 Mich 206, 210; 267 NW2d 923 (1978).

Proof by a preponderance of the evidence requires that the fact finder believe that the evidence supporting the existence of the contested fact outweighs the evidence supporting its nonexistence. See, e.g., *Martucci v Detroit Police Comm'r*, 322 Mich 270, 274; 33 NW2d 789 (1948).

Regarding an appeal filed with the State Office of Administrative Hearing and Rules for the Department of Community Health, the Administrative Law Judge is given ultimate discretion to determine the weight and credibility of the evidence presented. *Wiley v Henry Ford Cottage Hosp*, 257 Mich App 488, 491; 668 NW2d 402 (2003); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996) (the fact finder is provided with the unique opportunity to observe or listen to witnesses; and, it is the fact finder's responsibility to determine the credibility and weight of the testimony and other evidence provided).

It is the province of the Administrative Law Judge to adjudge the credibility and weight to be afforded the evidence presented. *Maloy v. Stuttgart Memorial Hosp.*, 316 Ark. 447, 872 S.W.2d 401 (1994).

MHP witnesses testified its decision is based on the medical consultation by a [redacted] who finds no exterior source for the Appellant's inability to breathe through her nose. It asserts that [redacted]' medical documentation focuses on cosmetic reasons for why the recommended Rhinoplasty is necessary. I disagree.

On physical examination, [redacted] specifically identifies marked deformity both to the internal and external nasal architecture. He indicates there is a collapse of the entire nasal dorsum with a saddle nose deformity and open roof deformity bilaterally, a collapse of the left side of the nose and a shift of the bony pyramid to the right. He further notes there is significant retraction of the nasal columella and internally the septum is markedly deformed deviating to the right side obstructing the right nostril approximately 60 percent.

Dr. Brandes' opinion does not, as the MHP contends, focus on purely cosmetic, non-medically

necessary reasons for the requested procedure. Rather, his findings and conclusions support his request for rhinoplasty, a reconstructive procedure designed to reconstruct the exterior nasal architecture in an attempt to alleviate the Appellant's breathing difficulties. The Appellant credibly testified that, because of both a deviated septum and exterior nasal deformity, she has been unable to breathe through her nose since childhood.

The MHP improperly contends that cosmetic surgery is a non-covered service under its guidelines. Cosmetic surgery is specifically a Medicaid-covered service, when it is a component of reconstructive surgery for congenital deformity or, in this case, childhood trauma.

Under its contract with the Department an MHP is permitted to establish medical necessity criteria, but prohibited from imposing criterion on its members that fee-for-service beneficiaries would not otherwise have to satisfy. I specifically conclude the MHP's criteria conflict with clearly articulated Medicaid Provider Manual criteria that provide coverage for cosmetic procedures under certain conditions.

The MHP also relies on a medical opinion from [redacted] that I find inconclusive and of little probative value. The opinion articulates conflicting conclusions on the specific issue presented in this appeal---whether the Appellant's exterior nasal architecture plays a role in her difficulty breathing through her nose.

For example, the opinion notes no obvious deformity; yet, it acknowledges on physical examination that the Appellant's exterior nasal architecture reveals irregularities. The opinion also readily acknowledges that both the septum and tip of the nose are deviated to the right. The opinion further acknowledges the tip of Appellant's nose slightly broadened, which may be a factor contributing to the Appellant's difficulties in breathing through her nose.

Because the [redacted] opinion provides little or no insight into whether exterior nasal architecture may, in fact, play a part in the Appellant's breathing difficulties, it is afforded little weight in this proceeding.

Based on the aforementioned analysis, I conclude the MHP has improperly denied the Appellant's request for Rhinoplasty, which, according to a preponderance of the evidence presented, is a Medicaid-covered, medically necessary service.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, I decide the Appellant has established, by a preponderance of the evidence presented, that the MHP's denial of her request for Rhinoplasty is erroneous.

IT IS THEREFORE ORDERED that:

The Medicaid Health Plan's decision is REVERSED.

Stephen B. Goldstein
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:

Date Mailed: 4/22/2009

***** NOTICE *****

The State Office of Administrative Hearings and Rules for the Department of Community Health may order a rehearing on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. The State Office of Administrative Hearings and Rules for the Department of Community Health will not order a rehearing on the Department's motion where the final decision or rehearing cannot be implemented within 90 days of the filing of the original request. The Appellant may appeal the Decision and Order to Circuit Court within 30 days of the mailing date of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the mailing date of the rehearing decision.