STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

Appellant
_____________________/

Docket No. 2009-37309 QHP
Case No.

DECISION AND ORDER

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

After due notice, a hearing was held on . , appeared on behalf of the Appellant, who was present and testified. They had no other witnesses. , director of appeals, represented the . Her witnesses included, and , medical director.

ISSUE

Did the Medicaid Health Plan properly deny Appellant's request for Bariatric Surgery?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Appellant is a Medicaid beneficiary who was enrolled in , since . (Appellant's Exhibit #1)

2. The Appellant is a who weighs and has a BMI o (See Testimony)

3. On MHP received the Appellant's request for PA of Bariatric surgery from the Appellant's primary care physician. (Respondent Exhibit A, p. 2)

4. The Appellant's request was medically reviewed, denied and internally appealed and denied again. The Appellant then sought an administrative hearing before the State Office of Administrative Hearings and Rules (SOAHR). (See Respondent's Exhibit A, pp. 3-106)

5. The Appellant is afflicted with edema, abdominal blisters, kidney disease, CHF, DM and morbid obesity. He uses a bi-pap machine for chronic obstructive apnea. He carries and uses portable oxygen. (See Testimony)

6. The MHP Medical Director, , reviewed the case record on or about He also had peer to peer discussions with the Appellant's physicians. He concluded that the Appellant's weight gain could not be explained away solely by fluid retention. The Appellant's PCP agreed that the Appellant's recent weight gain could not be explained away by fluid retention. The Appellant's nephrologist agreed, adding that the Appellant has not been compliant with submission of food diaries and exercise logs. (Respondent Exhibit A, pp. 11-12)

7. The MHP provided ample evidence that the Appellant had non-complying participation throughout the program indicating a lack of commitment to the dietary program thus foretelling a lack of success post surgery. (See Testimony)

8. On , the MHP advised the Appellant that the request for Bariatric surgery evaluation was denied because he did not meet the terms of his commitment agreement. The Appellant then began his internal and external appeal process. (Respondent Exhibit A, pp. 37, 39)

9. The instant request for hearing was received by SOAHR on . (Appellant's Exhibit 1)

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 , 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.

The Respondent 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 coverages 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 I-Z.
>
> Article II-G, Scope of Comprehensive Benefit Package, Contract, 2008, p. 32.
>
> 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 utilization management activities of the Contractor must be integrated with the Contractor's QAPI program.
>
> 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.
>
> *Supra*, Contract, §II-P p. 66.

The MHP witnesses testified that the Appellant had, over the course of a year, failed to comply with the terms and conditions of the HPM for evaluation and/or authorization of Bariatric surgery. medical director, testified that the evidence revealed that the Appellant was out of program compliance more than not. He said there was little or no evidence of weight loss, as well as incomplete exercise logs and food diaries.

The Appellant testified that he had significant weight loss followed by weight gain – owing to water retention. This was investigated by with the Appellant's physicians - neither of whom would credit the Appellant's weight gain solely to fluid retention. *See* Respondent's Exhibit A, pp. 11, 12.

The Appellant said that he had co-morbidities of CHF, apnea, and DM – all aggravated by obesity. He added that he took his diaries to his scheduled meetings – and opined that "maybe they didn't mark it down." He thought he was in compliance.

testified that there was no realistic evidence to demonstrate commitment to a dietary change – post surgery. The record further demonstrated, by third party expert review, that the Appellant was noncompliant with program requirements and had other potentials risks:

> Does this member have any contraindications to Bariatric surgery? Why or why not?
>
> > The patient's lack of compliance during the weight loss program would be considered a relative but not absolute contraindication to bariatric surgery. The patient has not demonstrated compliance during the Health Roads program which often will continue following a bariatric surgical procedure. The patient has not had psychological evaluation to determine if there is major psychopathology which is a contraindication to weight loss surgery. Binge eating disorder, which if present is considered a contraindication to weight loss surgery and must be treated to the point of complete remission prior to weight loss surgery. The patient's medical problems including diabetes, hypertension, sleep apnea, and peripheral edema are not contraindications to weight loss surgery and are the classic obesity-associated co-morbidities which invariably improve or resolve with weight loss surgery.

> The patient has a positive Prometheus screen which is suggestive of inflammatory bowel disease. There are no notes addressing this result and it is unclear why this was ordered. Inflammatory bowel disease, particularly Crohn's disease would be an absolute contraindication to weight loss surgery.
>
> ….

Conclusion/Decision to Not Certify:

> The patient has not demonstrated compliant participation in the Healthy Roads medical management program as required by the plan prior to bariatric surgery referral. The patient demonstrated no weight loss as required to suggest that the patient will be compliant with the radical lifestyle adjustment which is required following weight loss surgery. The patient needs psychological evaluation to determine that there is no significant psychopathology which will affect the patient's ability to comply with postoperative lifestyle adjustments. An eating disorder needs to be excluded, and if present, addressed and treated prior to weight loss surgery.

*See generally R*espondent Exhibit A, pp. 94-99

The Michigan Medicaid Provider Manual (MPM) policy related to weight reduction is as follows:

[Weight Reduction]

> Medicaid covers treatment of obesity when done for the purpose of controlling life-endangering complications, such as hypertension and diabetes. If conservative measures to control weight and manage the complications have failed, other weight reduction efforts may be approved. The physician must obtain PA for this service. Medicaid does not cover treatment specifically for obesity or weight reduction and maintenance alone.
>
> The request for PA must include the medical history, past and current treatment and results, complications encountered, all weight control methods that have been tried and have failed, and expected benefits or prognosis for the method being requested. If surgical intervention is desired, a psychiatric evaluation of the beneficiary's willingness/ability to alter his lifestyle following surgical intervention must be included.

> If the request is approved, the physician receives an authorization letter for the service. A copy of the letter must be supplied to any other provider, such as a hospital, that is involved in providing care to the beneficiary.
>
> MPM, Practitioner §4.22, October 1, 2009, page 39.

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The Appellant testified in conclusion that he did demonstrate lifestyle changes and that he remained desirous of obtaining Bariatric surgery and hoped to get beyond the "nit picking" requirements of program compliance.

The Petitioner has the burden of proving by a preponderance of evidence that he met the Medicaid policy criteria for coverage of Bariatric surgery. The MHP witness testified that they considered all of Appellant's medical documentation, in addition to peer to peer discussions, for Bariatric surgery in accordance with Medicaid policy and its MHP policy. The MPH established that Appellant had not demonstrated the medically necessary program compliance to justify the risk of Bariatric surgery.

The MHP properly denied the request for Bariatric surgery.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Medicaid Health Plan properly denied Appellant's request for Bariatric surgery.

IT IS THEREFORE ORDERED that:

The Medicaid Health Plan's decision is AFFIRMED.

Dale Malewska
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:

Date Mailed: 12/18/2009

***** NOTICE *****

The State Office of Administrative Hearings and Rules 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 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 receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt of the rehearing decision.