STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH
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IN THE MATTER OF:

Appellant
______________________/

Docket No. 2010-24439 QHP

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 as the Appellant's representative. appeared and testified.

was represented by , Appeals Coordinator. Medical Director, appeared as a witness for . Healthcare is a Department of Community Health contracted Medicaid Health Plan (hereinafter MHP).

ISSUE

Did the Medicaid Health Plan properly deny the Appellant's request for a genioglossal advancement 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. The Appellant is a Medicaid beneficiary who is currently enrolled in Healthcare, a Medicaid Health Plan (MHP).

2. The Appellant's medical conditions include mild obstructive sleep apnea, excessive daytime somnolence, history of sleep onset and sleep maintenance difficulties, as well as depression and anxiety with possible

bipolar disorder. Prior nasal surgeries were performed in (Exhibit 1, pages 10, 15, 18-19, and 26)

3. On , the MHP received a prior authorization request for genioglossal advancement surgery from the Appellant's doctor. (Exhibit 1 page 10)

4. On , the MHP sent the Appellant a denial notice stating that the request for surgical genioglossal advancement was not authorized because the submitted information did not show that the lower jaw was jutting forward or that the upper and lower jaw are crooked such that teeth do not match up evenly. (Exhibit 1 pages 2-3)

5. The Appellant appealed the denial on .

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.

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 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.

Genioglossal advancement surgery falls within Medicaid Provider Manual policy governing general surgery. Section 12 General Surgery states "Medicaid covers medically necessary surgical procedures." *Michigan Department of Community Health Medicaid Provider Manual; Practitioner Version Date: October 1, 2009, Page 60.*

As stated in the contract language above, MHP coverages and limitations must be consistent with Medicaid policy. The MHP witnesses testified that the MHP typically utilizes InterQual Procedures Criteria or industry standards and are used by the MHP to determine medical necessity but in this case, no such standards were available for the regarding genioglossal advancement surgery. After reviewing the InterQual Procedures criteria for osteotomy, anterior segment mandible, this ALJ aggress that they would not apply to evaluating the medical necessity of genioglossal advancement surgery to treat obstructive sleep apnea. However, it appears that the denial reasons listed on the letter were based on the InterQual Procedures criteria.

Instead, the MHP witness testified he utilized the Hayes Directory regarding surgical Sleep Apnea Treatment to review the requested procedure in the Appellant's case. (Exhibit 1, pages 5-9) Specifically, the MHP witness testified that the Hayes criteria indicate that the Mandibula-Maxillary Advancement (MMA) surgery is still investigational for treating obstructive sleep apnea. As noted by this ALJ during the hearing, MMA surgery is not the same procedure as the requested genioglossal advancement surgery. Accordingly, the Hayes Directory information regarding MMA surgery are not relevant to determining the medical necessity of genioglossal advancement surgery in the Appellant's case.

The MHP witness also testified that medical necessity for the requested surgery was not established by the documentation submitted to the MHP for review. The records note the Appellant has a history of not being able to use her CPAP machine. However, the only sleep study submitted to the MHP is dated [redacted] and indicated that the Appellant had an overall sleep efficiency of 92%. (Exhibit 1, page 19) The sleep study report only indicates a diagnosis of mild obstructive sleep apnea and states that for the difficulties of getting to sleep and staying asleep, adequate treatment for the Appellant's depression and anxiety will probably help more than anything else. (Exhibit 1, page 20)

Based on the physician's notes, it appears alternative treatments, such as use of an oral appliance for support, would be appropriate. (Exhibit 1, page 12) As discussed during the hearing, the MHP also denied the Appellant's prior authorization request for this device. However, the Appellant did not file a hearing request regarding that denial. Accordingly, this ALJ lacks the jurisdiction to review the MHP's determination regarding the oral support appliance. The physician also indicated he would try to find an alternative for this device that may be commercially available and less expensive for the Appellant to try. (Exhibit 1, page 12)

Medicaid beneficiaries are only entitled to medically necessary Medicaid covered services. *See 42 CFR 440.230.* Based upon the documentation submitted to the MHP, the medical necessity for genioglossal advancement surgery had not been established in the Appellant's case. The Appellant faxed a more recent sleep study report to this ALJ's office after the hearing, however, this ALJ did not leave the record open for the submission of additional evidence. The [redacted] sleep study report has not been reviewed by the MHP and could be submitted to them as part of a new request for the genioglossal advancement surgery, or an alternative treatment for the Appellant's sleep apnea.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the MHP properly denied the Appellant's request for genioglossal advancement surgery.

IT IS THEREFORE ORDERED that:

The Medicaid Health Plan's decision is AFFIRMED.

____
Colleen Lack
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:

Date Mailed: 5/28/2010

***** 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.