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

[redacted],

Appellant
_____/

Docket No. 2010-27598 QHP
Case No. [redacted]

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ) 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 [redacted]. Ms. [redacted] appeared on her own behalf. Ms. [redacted], Member Satisfaction Coordinator, represented [redacted]., the Medicaid Health Plan (hereinafter MHP).

ISSUE

Did the Medicaid Health Plan properly deny Appellant's request for a psychiatric examination for bariatric surgery?

FINDINGS OF FACT

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

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

2. On [redacted], the MHP received a request for bariatric surgery from the Appellant's physician. The request documented that the Appellant has a history of type II diabetes and hypertension as well as a BMI over 60. (Exhibit 1, page 5)

3. On March 16, 2010, the MHP sent the Appellant a denial notice stating that the request for psychiatric testing for bariatric surgery was not authorized

because the submitted clinical documentation did not establish all other criteria for bariatric surgery had been met. Specifically, participation in a weight loss program with an approved provider for 12 continuous months, within the last year. (Exhibit 1, page 2)

4. The Appellant requested a formal, administrative hearing contesting the denial on March 25, 2010. (Exhibit 1, page 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 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 coverage(s) and limitations. (Emphasis added by ALJ)* 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 coverage(s) 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.

As stated in the Department-MHP contract language above, a MHP, "must operate consistent with all applicable Medicaid Provider Manuals and publications for coverages and limitations." The pertinent section of the Michigan Medicaid Provider Manual (MPM) states:

4.22 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.
>
> *Department of Community Health,*
> *Medicaid Provider Manual, Practitioner*
> *Version Date: October 1, 2009, Page 39*

The DCH-MHP contract provisions allow prior approval procedures for utilization management purposes. The MHP representative and MHP witness explained that for a procedure such as bariatric surgery, the MHP requires prior approval. In order to achieve prior approval it was further explained that specific criteria must be met. The MHP submitted their policy regarding medical/surgical management of obesity. (Exhibit 1, pages 8-10) The MHP explained that besides the psychological evaluation, the only criteria the Appellant had not met for bariatric surgery was compliance with a medically supervised weight loss program for at least 6 months, preferably 12 months, within the past year. (Testimony, Exhibit 1, pages 9-10 and Exhibit 2, page 3) The MHP testified that coverage for the psychological evaluation could not be approved until documentation of compliance with a medically supervised weight loss program was submitted.

The Appellant testified that she does not believe failure to attempt a diet for the past 6 months should be a reason to deny her request. The Appellant testified she has tried diets over the past 16 years but they did not help. The Appellant believes that she needs the requested bariatric services or her situation could prove fatal. (Exhibit 1, page 1) However, the Appellant also testified that she began a diet program 3 months ago, which her doctor is aware of.

The MHP's bariatric surgery prior approval process is consistent with Medicaid policy and allowable under the DCH-MHP contract provisions. The MHP demonstrated that based on the submitted information, the Appellant did not meet criteria for approval of bariatric surgery. While the MHP policy does not address the order in which the Appellant must meet the criteria, it was reasonable to deny coverage for the psychiatric examination when there was no documentation a medically supervised weight loss program had even begun. The MHP testified that they would accept documentation from the Appellant's physician regarding her recent diet and exercise program and reconsider the request for the psychiatric examination and bariatric surgery.

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 a psychiatric examination for bariatric 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: [redacted]

Date Mailed: 06/16/2010

***** 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.