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. 2010-44987 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 on his own behalf.

Health Plan of Michigan was represented by , Manager of Member Services. , Medical Director, appeared as a witness for . is a Department of Community Health contracted Medicaid Health Plan (hereinafter MHP or Department).

ISSUE

Did the Medicaid Health Plan properly deny the Appellant's request for cervical spine fusion?

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 a Medicaid Health Plan (MHP).
2. The Appellant suffers from cervical radiculopathy.
3. The MHP received a , prior authorization request for cervical discectomy with fusion. Attached clinical documentation included an orthopaedic center progress note and an MRI report. (Exhibit 1, pages 7-

10)

4. The MHP had other clinical information indicating the Appellant uses tobacco on a regular basis. (Medical Director Testimony)

5. On [redacted] the MHP sent the Appellant a Notification of Denied Service stating that the request for cervical discectomy with fusion was not authorized because the MHP's policy for cervical spine fusion requires members to be nicotine free for a period of four weeks prior to any fusion surgery. (Exhibit 1, pages 12-14)

6. The Appellant appealed the denial on [redacted].

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.

Cervical fusion 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 April 1, 2010, Page 60.*

As stated in the contract language above, MHP coverages and limitations must be consistent with Medicaid policy. The above contract language also says an MHP must conform to managed health care industry standards and processes and its utilization management decisions must be made by a health care professional who has appropriate clinical expertise regarding the service under review. The MHP physician reviewers have appropriate clinical expertise for surgical procedures regarding the Appellant. The MHP submitted the InterQual Procedures Criteria for Discectomy and Fusion, Anterior Cervical and the MHP's own policy criteria. (Exhibit 1, page 16-20)

The MHP Medical Director testified that the Appellant was denied the requested cervical discectomy with fusion surgery because he did not meet the MHP's criteria of being

nicotine free for a period of four weeks prior to any fusion surgery. The clinical documentation submitted with the prior authorization request does not address smoking. The Medical Director explained that the MHP reviewed prior records, prescriptions claims, and communicated with the Appellant's doctor's office to confirm that the Appellant was still smoking.

The Appellant acknowledged that he does smoke and testified he has been trying to quit. He argued that the surgery should not be denied based on a possibility and smoking is not guaranteed to reduce the chances of a favorable surgery outcome. He also stated that the same risks for a poor outcome are present for patients with diabetes, obesity, or alcohol abuse. The Appellant testified that he is losing usage and having increased pain while he has to wait to have the surgery.

The MHP Medical Director testified that an exception to the nicotine free criteria is considered in certain circumstances. Once such circumstance would be if a catastrophic or sudden injury that necessitated the surgery. He also testified that the MHP would consider waving the smoking criteria if the MHP received documentation of new or worsening symptoms.

The Appellant can always provide additional clinical documentation and/or a new prior authorization request to the MHP for reconsideration of the requested fusion surgery. This may include documentation to support his testimony of worsening symptoms for consideration of an exception to the nicotine free criteria, or documentation that he is no longer smoking.

The MHP's prior approval process is consistent with Medicaid policy and allowable under the DCH-MHP contract provisions. Based on the available information, the Appellant did not meet the MHP's criteria for a cervical discectomy with fusion due to smoking. At the time of the MHP's denial, no clinical documentation had been submitted with the prior authorization request that would allow for an exception to the nicotine free criteria. The MHP's denial is upheld.

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 Cervical Discectomy with Fusion based on the available information.

IT IS THEREFORE ORDERED that:

The Medicaid Health Plan's decision is AFFIRMED.

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

cc:

Date Mailed: ________________________

*** 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.