

**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. 2010-55802 QHP
Case No. 8524098

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 ██████████. The Appellant, ██████████, appeared on her own behalf. ██████████ appeared as the Appellant's ██████████. ██████████, represented the ██████████, the Medicaid Health Plan (MHP).

ISSUE

Did the MHP properly deny the Appellant's request for reduction mammoplasty (breast-reduction surgery) and panniculectomy?

FINDINGS OF FACT

Based on the competent, material, and substantial evidence presented, the Administrative Law Judge finds, as material fact:

1. The Appellant is ██████████ Medicaid beneficiary, who is currently enrolled in the Respondent MHP, ██████████.
2. On ██████████, the MHP received a request for breast-reduction surgery, panniculectomy, and eyelid surgery¹ from the Appellant's physician. The Appellant's physician noted that her breasts were markedly sagging and that her abdominal tissues extends significantly over the perineum. (Exhibit 1, page 13)
3. On ██████████, the MHP contacted the Appellant's physician's office to

1 The request for eyelid surgery was not raised in the Appellant's hearing request. Therefore, it will not be addressed herein.

obtain any documentation that it had to support any conservative treatment of the Appellant's conditions. (Testimony of ██████████)

4. On ██████████, the MHP sent the Appellant a denial notice, stating that her requests for breast-reduction surgery and panniculectomy were not authorized because the submitted clinical documentation did not establish that all criteria for the procedures had been met. Specifically, there was no documentation to support any care or conservative treatment for her sagging breasts or pannus. (Exhibit 1, page 8)
5. The Appellant requested a formal, administrative hearing contesting the denial on ██████████. (Exhibit 1, page 4)

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 MHPs.

The Respondent is one of those MHPs.

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. The Contractor 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 2.024.

*Section 1.022(E)(1), Covered Services.
MDCH contract (Contract) with the Medicaid Health Plans,
October 1, 2009.*

- (1) The major components of the Contractor's utilization management (UM) program must encompass, at a minimum, the following:
 - (a) Written policies with review decision criteria and procedures that conform to managed health care industry standards and processes.
 - (b) A formal utilization review committee directed by the Contractor's medical director to oversee the utilization review process.
 - (c) Sufficient resources to regularly review the effectiveness of the utilization review process and to make changes to the process as needed.
 - (d) An annual review and reporting of utilization review activities and outcomes/interventions from the review.
 - (e) The Um activities of the Contractor must be integrated with the Contractor's QAPI program.

(2) Prior Approval Policy and Procedure

The Contractor must establish and use a written prior approval policy and procedure for UM 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 UM decisions be made by a health care professional who has appropriate clinical expertise regarding the service under review.

*Section 1.022(AA), Utilization Management, Contract,
October 1, 2009.*

Under its contract with the Department, an MHP may devise criterion for coverage of medically necessary services, as long as those criterion do not effectively avoid providing medically necessary services. Reduction mammoplasty and panniculectomy fall within the Medicaid Provider Manual policy governing cosmetic procedures, set forth below:

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:

- 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.
- It contributes to a major health problem.

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

*Michigan Department of Community Health
Medicaid Provider Manual; Practitioner
Version Date: July 1, 2010
Page 65*

The MHP's policy requires that all of the following criteria be met before breast-reduction surgery can be approved as medically necessary and not cosmetic:

1. The member has debilitation symptoms solely due to macromastia, and:
 - Condition interferes with employment, **or**
 - Causes significant disability or psychological trauma, as documented by psychiatric evaluation, **or**
 - It is a component of reconstructive surgery for congenital deformity or trauma, **or**
 - It contributes to a major health problem, including but not limited to:
 - Chronic intertrigo, dermatitis, or ulceration caused by breast folds
 - Confirmed diagnosis of acquired kyphosis, compensatory lordosis, or scoliosis
 - Shoulder grooving from bra straps
 - Neck, shoulder, back or chest pain

2. The member must be:

- 18 years of age or older, and
- Not pregnant, and
- Not delivered a child within the past year.

* * *

4. Medical records must document the response to previously prescribed interventions, and substantiate the condition being refractory to non-invasive therapies.

*Upper Peninsula Health Plan,
Utilization Management Criteria for Medical Necessity,
Cosmetic vs. Reconstructive Surgery,
Reduction Mammoplasty
(Exhibit 1, page 19-20)*

The MHP's policy also indicates that the following criteria must be met to obtain prior approval for a panniculectomy:

- 1) The panniculus hangs to or below the level of pubis, and there is uncontrollable intertrigo refractory to medical therapy for a period of at least six (6) months. Evidence of this may include cellulitis, ulceration, lymphedema, and skin abscesses. Medical records must document the response to previously prescribed interventions and substantiate the condition being refractory to non-invasive therapies.
- 2) Minimum of one year post bariatric surgery.

*Upper Peninsula Health Plan,
Utilization Management Criteria for Medical Necessity,
Cosmetic vs. Reconstructive Surgery,
Panniculectomy
(Exhibit 1, page 18)*

The MHP's representative testified that the Appellant's request for prior approval of breast-reduction surgery and panniculectomy was denied because the MHP had received no documentation to support that the Appellant has undergone any conservative treatment for her conditions. The MHP's representative further testified that efforts were made to obtain additional documentation from the Appellant's physician. However, no additional documentation was received.

The Appellant testified that since her bariatric surgery in [REDACTED], she has lost [REDACTED] pounds. As a result of this monumental weight loss, she has sagging breasts and excess skin in her stomach area. She stated that she suffers from shoulder grooving and skin infections under her breasts and along her rib cage. She also stated that she suffers from constant skin infections from her pannus. She further stated that she has undergone conservative treatment for both conditions. In addition, the Appellant testified that she has several medical conditions that are exacerbated by her sagging breasts and pannus, including neck and low back pain and Reflex Sympathetic Dystrophy Syndrome.

The record was left open and the Appellant provided this Administrative Law Judge with a letter from her treating physician. Unfortunately, there was no clinical documentation, i.e., medical records or reports to support the letter and there was no mention of any conservative treatment for the conditions.

While this Administrative Law Judge sympathizes with the Appellant's situation, the documentation provided does not support that she has met the criteria for prior approval of breast-reduction surgery or panniculectomy. Accordingly, the MHP's denial was proper. However, the Appellant may re-apply for prior approval at any time should she obtain additional supporting documentation.

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 breast-reduction surgery and panniculectomy.

IT IS THEREFORE ORDERED that:

The MHP's denial is AFFIRMED.

Kristin M. Heyse
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc: [REDACTED]

Date Mailed: 1/5/2011

***** 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.