

**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 Nos. 2010-36174 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.*, 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 a witness for the Appellant. ██████████, represented the Medicaid Health Plan (MHP), ██████████. ██████████, and ██████████, appeared as witnesses for the MHP.

ISSUE

Did the MHP properly deny Appellant's request for lumbar (L5-S1) spine fusion surgery?

FINDINGS OF FACT

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

1. Appellant is a Medicaid beneficiary enrolled in the MHP.
2. The Appellant is a ██████████ female, who has been diagnosed with spinal stenosis. (Exhibit 1, page 12).
3. In ██████████, the MHP received the Appellant's request for lumbar spine fusion surgery [L5-S1] from the Appellant's neurosurgeon. (Exhibit 1, page 12).
4. On ██████████, the MHP sent a letter to the Appellant, stating that the request for lumbar spine fusion surgery was denied because she did not meet the following coverage criteria: (1) there is no documentation to

support a trial and failure of conservative non-surgical methods,¹ (2) the MRI does not reveal instability of the spine or spinal stenosis, (3) the physical examination does not reveal any gross motor or neurological deficits, and (4) there is no evidence that the Appellant stopped smoking.² (Exhibit 1, pages 9-11)

5. On ██████████, the Appellant submitted a Request for Administrative Hearing. (Exhibit 1, page 6).

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. 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 MHP chose not to proceed on this ground at hearing because after its denial, it had received evidence to support that the Appellant had met this criteria. (Testimony of ██████████)

² The MHP also chose not to proceed on this ground at hearing because the MHP had received evidence that the Appellant was nicotine free. (Exhibit 1, page 23; Exhibit 3, page 5; Testimony of ██████████ and ██████████)

(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)(1) and (2),
Utilization Management, Contract,
October 1, 2009.*

The MHP's Medical Director testified that the medical documentation submitted with the Appellant's request raised a question about the medical necessity and appropriateness of the spinal fusion. He explained that the MHP follows InterQual criteria, which requires that an MRI show either spinal stenosis or spondylolisthesis. Here, the Appellant's MRI did not support a diagnosis of either. The MHP witnesses testified that it denied the fusion authorization for that reason. The MHP did, however, offer to send the Appellant for a new MRI.


The Michigan Medicaid policy related to surgery is as follows:

SECTION 12 – SURGERY - GENERAL

Medicaid covers medically necessary surgical procedures.

(Emphasis added by ALJ).

*Michigan Department of Community Health,
Medicaid Provider Manual,
Practitioner Section,
April 1, 2010, page 60.*

The Appellant testified that she is in constant pain and that she suffers from depression because of it. She stated that she has tried physical therapy and injections to reduce the pain, but they have not helped. She further stated that she is frustrated with the MHP, and she can not understand why the MHP is denying her surgery because she has done everything that is required of her. She further testified that her husband must take care of her  son because she is unable.

The MHP properly denied the request for lumbar spine fusion surgery because, from the medical documentation provided, the Appellant does not meet the criteria for the procedure. However, the Appellant may re-apply at any time should that change.

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 lumbar spine fusion surgery.

IT IS THEREFORE ORDERED that:

The MHP's decision is AFFIRMED.

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

cc: 

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Date Mailed: 10/8/2010

***** 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.