

**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. 2010-38659 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.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. ██████████, ██████████, appeared on Appellant's behalf. ██████████, represented the Medicaid Health Plan (MHP), ██████████. ██████████, appeared as a witness for the MHP.

ISSUE

Did the Medicaid Health Plan properly deny Appellant's request for hiatal hernia repair (fundoplasty) 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. Appellant is a Medicaid beneficiary enrolled in ██████████ in the ██████████, a Medicaid Health Plan (MHP).
2. The Appellant is a ██████████ male with a history of gastro-esophageal reflux disease (GERD). (Exhibit 1, page 8).
3. On ██████████, the MHP received the Appellant's request for hiatal hernia repair surgery from Appellant's surgeon. Appellant's ██████████, request for authorization included medical documentation. (Exhibit 1, pages 7-12).

4. On ██████████, the MHP sent a letter to the Appellant stating that the request for hiatal hernia repair surgery was denied because the request did not meet criteria. The MHP letter stated that Appellant's submitted documentation did not indicate he had at least an eight week trial and failure of a proton pump inhibitor, or that his upper gastrointestinal test did not reveal esophagitis, and there was no documentation of a 24-hour pH monitoring result that was positive for reflux. The letter noted that a physician reviewer reviewed the request. The letter also indicated that a check on Appellant's pharmacy history revealed he had received a prescription for Prevacid, but only recently, on ██████████ (Exhibit 1, pages 17-27).
5. The Appellant requested an internal appeal of the denial. An MHP physician contacted and spoke with the Appellant's primary care physician. The Appellant's physician submitted additional medical documentation. (Exhibit 1, pages 17-27).
6. On ██████████, the Appellant submitted a Request for Administrative Hearing. (Exhibit 1, page 6).
7. On ██████████ the MHP upheld its prior denial. In its letter to the Appellant the MHP noted that the Appellant had been on Prevacid for 8 weeks at that point and the 24-hour pH monitoring result was negative for acid reflux. The letter also noted that while during the grievance appeal meeting the Appellant's mother indicated the Appellant had been losing weight over the past few months, records obtained from a primary care physicians office indicated he had steadily gained weight over the past year; approximately 13 pounds. The letter concluded that the Appellant had not met the health plan's criteria for surgery. (Exhibit 1, pages 28-29).

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 I-Z.

*Article II-G, Scope of Comprehensive Benefit Package.
MDCH contract (Contract) with the Medicaid Health Plans,
Final FY 2008 Contract, p. 32.*

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 utilization management activities of the Contractor must be integrated with the Contractor's QAPI program.

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, MDCH Contract,
Final FY 2008 Contract, p. 66.*

MHP witness ██████████ indicated that the MHP hiatal hernia repair surgery policy is consistent with Medicaid policy. Witness ██████████ explained that its criteria for coverage of hiatal hernia repair surgery requires certain clinical findings, including the trial of a proton pump inhibitor such as Prevacid before a surgery can be approved. MHP witness ██████████ explained that the medical documentation submitted for Appellant showed that he had only been on Prevacid for three weeks, and not the total of eight weeks trial required by the criteria. (Exhibit 1, pages 30-31). ██████████ added that several of the tests that needed to be performed on the upper gastric-esophageal area had not been performed prior to authorization. (Exhibit 1, pages 30-31).

██████████ explained that when the Appellant did have a pH test performed five weeks after starting Prevacid, the test results showed he had no acid reflux. ██████████ further explained that the requested surgery was invasive and not without potential complications, and the criteria helped ensure that more conservative methods were tried before invasive surgery.

The Michigan Medicaid policy related to surgery is as follows:

SECTION 12 – SURGERY - GENERAL

Medicaid covers medically necessary surgical procedures.

(Emphasis added by ALJ).

*MDCH Medicaid Provider Manual, Practitioner Section,
January 1, 2008, page 60.*

An analysis of the MHP's criteria for hiatal hernia repair surgery concludes that it is consistent with the Medicaid policy listed above. A review of the documentation sent in by Appellant's health care provider as part of the request for hiatal hernia repair surgery authorization showed that Appellant did not have documentation that conservative methods had been tried and failed, thus establishing lack of medical necessity. Further, the clinical findings were inconsistent with the proposed hiatal hernia repair, because a pH test conducted after a five-week trial of Prevacid showed there was no acid reflux.

The Appellant's Representative/mother testified that despite the medical documentation that Appellant's acid reflux/hiatal hernia had improved, the Appellant still had a lot of problems with acid reflux. The Appellant's Representative/mother testified that the Appellant's acid reflux is severe to the point that he doesn't eat much and is losing

weight.

explained that records obtained from a primary care physician's office indicated he had steadily gained weight over the past year; approximately 13 pounds.

The MHP properly denied the request for hiatal hernia repair surgery because from the medical documentation provided, medical necessity was not established.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Medicaid Health Plan properly denied Appellant's request for hiatal hernia repair surgery.

IT IS THEREFORE ORDERED that:

The Medicaid Health Plan's decision is **AFFIRMED**.

Lisa K. Gigliotti
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:



Date Mailed: 9/2/2010

***** 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.