

**STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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**IN THE MATTER OF:**

**Docket No.** 2010-49405 QHP  
**Cas** [REDACTED]

[REDACTED],

Appellant

\_\_\_\_\_ /

**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 [REDACTED]. The Appellant, [REDACTED], appeared on his own behalf. [REDACTED], Director of Member Services, represented the Medicaid Health Plan (MHP), Health Plan of Michigan. [REDACTED] Manager of Acute and Patient Services, and [REDACTED], Medical Director for Utilization, appeared as witnesses for the MHP.

**ISSUE**

Did the MHP properly deny the Appellant's request for lumbar 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. The Appellant is a Medicaid beneficiary enrolled in the MHP.
2. The Appellant is a [REDACTED], who has been diagnosed with degeneration of his lumbar spine post lumbar laminectomy in [REDACTED]. (Exhibit 2, page 2; Exhibit 1, page 21)
3. On [REDACTED], the MHP received the Appellant's request for lumbar spine fusion surgery from the Appellant's surgeon. (Exhibit 2, page 2)

**Docket Nos. 2010-49405 QHP  
Decision and Order**

4. The MHP forwarded the medical documentation to an external, independent medical reviewer, board certified in neurological surgery. (Exhibit 1, pages 21-24)
5. On [REDACTED], the MHP sent a letter to the Appellant, stating that his request for lumbar spine fusion surgery was denied because he did not meet medical necessity coverage criteria. The MHP letter stated that because there was no evidence of instability, it appears the surgery is being requested for pain management only, which is considered experimental/investigational. Further, the Appellant is not nicotine free. (Exhibit 1, pages 26-29)
6. On [REDACTED], the independent medical reviewer issued a report in which he found that the requested surgery was not appropriate because the Appellant did not meet [REDACTED] criteria. Specifically, there was no evidence of segmental instability of the spine, and since the surgery is being requested for back pain only, he opined that it would be considered experimental/investigational. (Exhibit 1, pages 21-24)
7. On [REDACTED], 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 [REDACTED], 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 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 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 MHP's Medical Director testified that the medical documentation submitted for the Appellant raised a question about the medical necessity and appropriateness of the spinal fusion surgery. He explained that the request for lumbar spine fusion surgery was forwarded to an external board-certified neurological surgeon, who issued a report finding that the spinal fusion was not appropriate because there was no evidence of instability of the spine, and spinal fusion for pain management alone is considered experimental/investigational. He further explained that the MHP follows ██████████ criteria, which requires that an X-ray show either instability of the spine or Grade IV spondylolisthesis. Here, the Appellant's MRI and X-ray did not support either. The Medical Director further noted that the request was denied because, at that time, the Appellant was not nicotine free.

The Appellant testified that he is in chronic pain, and he is willing to take a chance with the surgery to try to obtain some relief. He stated that physical therapy was painful for him. He further stated that he quit smoking in April 2010.

An analysis of the MHP's criteria for lumbar spine fusion surgery concludes that it is consistent with the Medicaid policy listed above. A review of the documentation sent in by Appellant's surgeon with the request for lumbar spine fusion surgery authorization failed to show that he suffers from either instability of his spine or Grade IV spondylolisthesis. Therefore, the MHP properly denied the Appellant's request for lumbar spine fusion surgery because, from the medical documentation provided, he does not meet the criteria for the procedure.

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

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

cc:



Date Mailed: 11/8/2010

**\*\*\* 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.