STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

[redacted],

Docket No. 2011-22365 QHP
Case No. [redacted]

Appellant
_____/

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ) 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 [redacted]. [redacted], the Appellant, appeared on her own behalf. [redacted] represented [redacted] the Medicaid Health Plan (hereinafter MHP). [redacted], and [redacted], appeared as witnesses for [redacted].

ISSUE

Did the Medicaid Health Plan properly deny Appellant's request for bariatric surgery?

FINDINGS OF FACT

Based upon the competent, material, and substantial evidence presented, I find, as material fact:

1. The Appellant is a [redacted] female Medicaid beneficiary who is currently enrolled in [redacted], a Medicaid Health Plan (MHP).

2. On [redacted], the MHP received a request for laproscopic placement of the adjustable gastric band from the Appellant's physician. The request indicates that the Appellant has been diagnosed with morbid obesity, hypertension, dyslipidemia, gout, gastroespohageal reflux, urinary incontinence, menstrual irregularities, chronic back pain, arthritis (Degenerative joint disease), depression, other mental health diagnosis, abnormal skin/pannus problems, and lower extremity swelling. (Exhibit 1, pages 8-9)

3. The MHP utilizes the InterQual Criteria in reviewing prior approval requests

for bariatric surgery. ([redacted] Testimony and Exhibit 1, pages 63-64)

4. The InterQual Criteria for Bariatric Surgery includes requirements for continued obesity despite supervised diet program greater than or equal to six months and drug/alcohol screen. (Exhibit 1, page 63)

5. The documentation submitted indicated that the Appellant underwent an extensive work up in preparation for the requested procedure, including a "weight loss history - [redacted] – 6 months." (Exhibit 1, page 9)

6. The submitted medical records do not document a supervised dietary program lasting at least six months. (Exhibit 1, pages 8-59)

7. The Appellant began a supervised weight loss program after the date of the last medical records included with the prior authorization request. (Appellant Testimony)

8. The documentation submitted included lab work, but not a drug/alcohol screen. (Exhibit 1, pages 38-50)

9. On [redacted], the MHP sent the Appellant a denial notice stating that the requested procedure was not authorized because the submitted information did not include documentation of completion of compliance with a supervised diet program, there were only 6 weights listed in the medical record since [redacted], and there is no evidence of drug screening results. (Exhibit 1, page 67)

10. On [redacted], the Appellant requested a formal, administrative hearing contesting the denial.

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 coverage(s) and limitations. (Emphasis added by ALJ)* 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 coverage(s) 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.

As stated in the Department-MHP contract language above, a MHP, "must operate consistent with all applicable Medicaid Provider Manuals and publications for coverages and limitations." The pertinent section of the Michigan Medicaid Provider Manual (MPM) states:

> **4.22 WEIGHT REDUCTION**
>
> Medicaid covers treatment of obesity when done for the purpose of controlling life-endangering complications, such as hypertension and diabetes. If conservative measures to control weight and manage the complications have failed, other weight reduction efforts may be approved. The physician must obtain PA for this service. Medicaid does not cover treatment specifically for obesity or weight reduction and maintenance alone.
>
> The request for PA must include the medical history, past and current treatment and results, complications encountered, all weight control methods that have been tried and have failed, and expected benefits or prognosis for the method being requested. If surgical intervention is desired, a psychiatric evaluation of the beneficiary's willingness/ability to alter his lifestyle following surgical intervention must be included.
>
> If the request is approved, the physician receives an authorization letter for the service. A copy of the letter must be supplied to any other provider, such as a hospital, that is involved in providing care to the beneficiary.
>
> *Department of Community Health,*
> *Medicaid Provider Manual, Practitioner*
> *Version Date: October 1, 2010, Pages 39-40*

The DCH-MHP contract provisions allow prior approval procedures for utilization management purposes. The MHP Medical Director explained that for a procedure such as bariatric surgery, the MHP reviews prior approval requests under InterQual Criteria. (Exhibit 1, pages 63-64) The InterQual Criteria for Bariatric Surgery includes requirements for continued obesity despite supervised diet program greater than or equal to six months and drug/alcohol screen. (Exhibit 1, page 63) The [redacted] explained that the medical records did not document a supervised dietary program. The summary chart for [redacted] only shows six weights were recorded between [redacted] and [redacted]. (Exhibit 1, page 13) The [redacted] also noted that the psychological evaluation report included concerns regarding the surgery including the Appellant's reliance on marijuana. (See also Exhibit 1, page 54) The [redacted] explained that this was not addressed in the other documentation submitted with the prior authorization request. ([redacted] Testimony) Additionally, the submitted the lab work does not include a drug/alcohol screen. (Exhibit 1, pages 38-50)

The Appellant disagrees with the denial and testified that her weight negatively impacts her other medical conditions. The Appellant stated that she has done everything the MHP has asked her to do since her previous prior authorization request for this surgery was denied. She was under the understanding that six weights on record were all that was needed. However, she testified that she has also been participating in a physician supervised dietary program since the last date on the [redacted] summary chart. The Appellant also explained that she smokes the marijuana for the pain in her feet. (Appellant Testimony)

The MHP's bariatric surgery prior approval process is consistent with Medicaid policy and allowable under the DCH-MHP contract provisions. The MHP demonstrated that based on the submitted information, the Appellant did not meet criteria for approval of bariatric surgery due to not having a documentation of a supervised dietary program lasting at least six months and a drug/alcohol screen. As such, the MHP properly denied prior approval of this procedure based on the available information.

However, this does not imply that the Appellant will never qualify for this procedure. The Appellant may wish to submit a new prior authorization request for this procedure including documentation of her supervised dietary program, a drug screen and documentation addressing concerns raised in the psychological evaluation including her use of marijuana for pain.

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 bariatric surgery based on the available information.

IT IS THEREFORE ORDERED that:

The Medicaid Health Plan's decision is AFFIRMED.

Colleen Lack
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

[redacted]
Docket No. 2011-22365 QHP
Decision and Order

cc: [redacted]

Date Mailed: 5/17/2011

***** NOTICE *****

The Michigan Administrative Hearing System 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 Michigan Administrative Hearing System 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.