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:

Docket No. 2011-43174 QHP
Case No. [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 [redacted]. The Appellant was represented by Kathleen Davis.

[redacted] represented the Medicaid Health Plan (MHP), [redacted] appeared as a witness for the MHP.

ISSUE

Did the MHP properly deny Appellant's request for lumbar spine fusion 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 the MHP.

2. The Appellant is a [redacted]-year-old female, who has been diagnosed with early degenerative disc disease. She has sought treatment for back pain for at least 5 years.

3. The Appellant seeks prior authorization for a lumbar spine fusion. She has not had prior back surgery.

4. On [redacted], the Appellant had an MRI of her back completed. The impression from the report reads:

    1. Early degenerative disc disease at L3-4.

2. Degenerative disc disease with diffuse annular bulge at the L4-5 level with bilateral facet hypertrophy, and resultant neural foraminal stenosis, left greater than right. Mild central canal stenosis is present as well.

3. At the L5-S1 level, there is mild diffuse annular bulge but no evidence of disc herniation or central canal stenosis at this level.

5. The Appellant reports to her doctor at an office visit in [redacted] that she has constant pain at level 8 of 10, that is knife like and sharp. When asked, she indicated standing, walking, sitting, lying, exercise and physical therapy all make it worse. It is not worse from coughing or sneezing. She denies loss of bowel or bladder. She has not been hospitalized for back pain. She reports that only narcotics improves the pain.

6. Following a 12 system review by [redacted] in [redacted], a report was generated which contained the following findings (summarized by ALJ): normal gait, lumbar spine alignment was within normal limits, bilateral hip range of motion was full, symmetric and painless, sensation was intact in all dermatomes, lower extremity deep tendon reflexes normal. Neurologic tests, cardiovascular system and lower extremity muscle strength testing was all normal (5/5). (Exhibit 1, pages 10-13).

7. The Neurologist diagnosed L4-l5 degenerative spondylolisthesis and lateral Translational Instability at the [redacted] consultation. He referred the Appellant for physical therapy, aquatherapy and placed activity restrictions to pain tolerance and to include lifting, bending and twisting. The doctor discussed the importance of home exercise, progressing to a physical therapy program and continuing with a lifetime fitness regimen with the Appellant. (Exhibit A, page 12)

8. The MHP received the above-referenced medical report and request for prior authorization for the spinal fusion surgery on behalf of the Appellant.

9. The MHP determined the sought surgery was not medically necessary. A review was sought.

10. The MHP sent the medical documentation for review to an independent medical reviewer. The peer reviewed final report determined the surgery sought was not medically necessary as the Interqual criteria for nontraumatic instability had not been met.

11. The MHP sent a letter to the Appellant, stating that the request for lumbar spine fusion surgery was denied because she did not meet medical necessity coverage criteria. The MHP letter stated that Appellant had not

provided the following: (1) documentation of trial and failure of physical therapy participation and (2) evidence the Appellant stopped smoking. (Exhibit 1, page 52)

12. On [redacted], the Appellant submitted a Request for Administrative Hearing.

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 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.

(3) 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 witness testified that the medical documentation submitted for the Appellant raised a question about the medical necessity and appropriateness of the spinal fusion. He explained that the request for lumbar spine fusion surgery was forwarded to an external peer review board, who issued a report finding that the spinal fusion was not appropriate because the Appellant's medical records did not indicate a 3 consecutive month trial of physical therapy had been completed within the last 9 months and there was no clinical documentation the Appellant had stopped smoking.

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 severe pain and wants her life back. She said she has been dealing with this for 6 years. The Appellant also testified that she has tried physical therapy but not within the last 9 months. The Appellant further testified that she will quit smoking if she gets approved for the surgery.

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 neurosurgeon with the request for lumbar spine fusion surgery authorization failed to show that physical therapy had been tried and failed. Additionally, the Appellant has not succeeded in smoking cessation yet.

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.

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.

_____
Jennifer Isiogu
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

[redacted]
Docket No. 2011-43174 QHP
Decision and Order

cc: [redacted]

Date Mailed: 10/4/2011

***** 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.