

**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. 2011-51879 PA
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.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on [REDACTED]. The Appellant appeared without representation. Her witness was her spouse, [REDACTED]. [REDACTED] Appeals Review Officer represented the Department. Her witness was [REDACTED].

PRELIMINARY MATTER

At hearing, admission of the Appellant's proposed Exhibit #2 was taken under advisement. The record was left open to allow the Appellant to send the document in to the Michigan Administrative Hearing System. On receipt – the exhibit is admitted, but afforded little weight in support of her request for gastric by-pass surgery.

ISSUE

Did the Department properly deny Appellant's request for gastric bypass 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. At the time of hearing the Appellant is a [REDACTED] year-old Medicaid beneficiary. (Appellant's Exhibit #1)

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2. The Appellant is afflicted with DM, sleep apnea and anxiety. (See Department's Exhibit A – throughout)
3. On [REDACTED], the Department's reviewing physician [REDACTED] received a request from [REDACTED] for approval of gastric bypass surgery for the Appellant. (Department's Exhibit A, p. 2)
4. After reviewing additional requested information gathered by the requesting physician, [REDACTED] denied the request for PA of gastric bypass surgery on [REDACTED], as the submitted information failed to reflect unsuccessful conservative measures aimed at controlling diabetes and sleep apnea. (Department's Exhibit A, p. 3)
5. The Appellant was advised of the denial, in writing, on [REDACTED], and she was further advised of her appeal rights. (Department's Exhibit A, p. 5)
6. On [REDACTED], the instant request for hearing was received by the Michigan Administrative Hearing System for the Department of Community Health. (Appellant's Exhibit #1)

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.

Medicaid does not provide for treatment of obesity, weight reduction or maintenance alone:

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. Medicaid Provider Manual (MPM) Practitioner, section 4.22, July 1, 2011 at page 39

The Appellant's testimony established that while she has important concerns and medication anxiety her physical health presents no life endangering condition not under successful management by her physician. The data submitted for review by ██████████ showed that the Appellant's most recent H1Ac was within normal limits and her sleep apnea had recently shown "substantial improvement consistent with use of a CPAP machine.

While the need to take medication and utilization of medical equipment may present as a suboptimal course of treatment - the fact remains that the Appellant's physician did not provide documentation of recurrent, life threatening, and unresponsive health issues necessary to authorize approval of the drastic remedy of gastric bypass surgery.


██████████, while appreciating the Appellant's concern, observed the standard of medical necessity was not met as the Appellant's health conditions have not escaped sound medical management.

On review, however well intended, it is obvious that the Appellant and her family seek an equitable remedy beyond the jurisdiction of this ALJ. Her medical evidence does not support the remedy of surgery. See Department's Exhibit A, at pages 6 through 73.

The Appellant has failed to preponderate that level of proof necessary to establish that the requested gastric bypass surgery is medically necessary to control a life endangering condition.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly denied the Appellant's request for gastric bypass surgery.


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IT IS THEREFORE ORDERED that:

The Department's decision is **AFFIRMED**.

Dale Malewska
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc: 

Date Mailed: 11/22/2011

***** 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.