

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

██████████,

Appellant

Docket No. 2011-52613 QHP
Case No. ██████████

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 ██████████, Attorney, appeared on the Appellant's behalf ██████████, the Appellant, appeared and testified. ██████████, Director, Member Services, represented ██████████, the Medicaid Health Plan (MHP). ██████████ Associate Medical Director, Medical Management, appeared as a witness for the MHP.

ISSUE

Did the MHP properly deny the Appellant's request for non-emergent out of state services?

FINDINGS OF FACT

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

1. The Appellant is a ██████ year old Medicaid beneficiary who is enrolled in the ██████████, a MHP.
2. A ██████████, Computed Tomography (CT) showed imaging findings suspicious for temporal bone dehiscence on the right consistent with superior canal dehiscence syndrome. (Exhibit 1, pages 25 and 32)
3. On ██████████, the Appellant saw ██████████ for a consultation prior to her scheduled surgery. ██████████ impressions were right superior semicircular canal dehiscence and consider right perilymphatic fistula. (Exhibit 1, page 55)

4. On ██████████, the Appellant underwent middle fossa repair of right superior semicircular canal dehiscence with ██████████ of the ██████████ ██████████ (Exhibit 1, page 54)
5. The Appellant reported symptoms reoccurring shortly after the ██████████ ██████████ surgery and persisting. (Exhibit 1, pages 3-8, 13-17, 38, 49-51, 53 and 56-57; Appellant Testimony)
6. On ██████████ wrote a letter on the Appellant's behalf supporting the Appellant's request to seek a second opinion from ██████████, to undergo further specialized evaluation and testing, and to consider surgery. ██████████ noted that the Appellant had recently visited with ██████████ at the ██████████. (Exhibit 1, page 7)
7. An ██████████, CT showed: (1) Essentially normal temporal bone findings bilaterally. Specifically, no findings consistent with semicircular canal dehiscence on dedicated temporal bone imaging. (2) Silastic resurfacing implant material identify anterior to the right temporal bone. (Exhibit 1, pages 20-21 and 46-47)
8. On ██████████ saw the Appellant and declined to write a letter on the Appellant's behalf indicating that ██████████ could provide testing and treatment that was not available locally. ██████████ noted that the CT the Appellant underwent on ██████████, shows no evidence of superior semicircular dehiscence on either side, the images are quite clear, and this finding is unequivocal. ██████████ noted that the resurfacing material was not in the vicinity of the superior semicircular canal. (Exhibit 1, pages 3-4 and 14-15)
9. On ██████████ wrote a letter to ██████████ regarding his second opinion of the Appellant. ██████████ indicated he had obtained vestibular-evoked myogenic potentials, electrocochleography, and a repeat CT with reformatted images directed at the superior semicircular canals. The electrocochleography and vestibular evoked myogenic potentials responses were all within normal limits and the CT showed no evidence of superior semicircular canal dehiscence on either side, but it did show the Silastic resurfacing material on the right was not in the vicinity to the superior semicircular canal. ██████████ further stated he did not find anything to suggest a perilymphatic fistula and recommended against any further ear surgery for the Appellant's present complaints. (Exhibit 1, page 22)
10. In ██████████, the MHP received a prior authorization request for out of state office visit and surgery with ██████████ in ██████████. Documentation was provided from ██████████ and the ██████████ and the ██████████, and ██████████ of ██████████. (Exhibit 1, pages 3-25)

11. In [REDACTED] and [REDACTED] wrote several Letters of Medical Necessity and Pre-Authorization Requests stating the Appellant has findings indicative of superior semicircular canal dehiscence, surgical treatment is medically necessary, and he is one of the few Neurotologists with more experience than just a handful of cases of superior semicircular canal dehiscence. (Exhibit 1, pages 9-11, 23, 37, and 48)
12. On [REDACTED], the MHP denied the Appellant's prior authorization request for non-emergent out of state services. The notice indicates the information submitted did not meet coverage for criteria. Specifically, notes from at least two in state tertiary care centers noting they are unable to treat the condition and requesting an out of state provider for necessary medical care. The notes showed the Appellant had a second opinion with [REDACTED] at [REDACTED] with negative results to support a diagnosis of bilateral semicircular canal dehiscence. (Exhibit 1, pages 27-28)
13. The MHP received additional medical documentation for a Level 1 Internal review, including a copy of the [REDACTED], CT; [REDACTED] electrocochleography, vestibular evoked myogenic potentials, vestibular evoked potential, and evoked potential testing; another Letter of Medical Necessity and Pre-Authorization Request from Dr. Gianoli, and an [REDACTED] letter from [REDACTED]. (Exhibit 1, pages 32-38)
14. On [REDACTED] wrote a letter indicating the Appellant had been seen by [REDACTED], who confirmed persistent findings of superior semicircular canal dehiscence, surgical treatment is the only known treatment, and [REDACTED] is a renowned neuro-otologist with extensive experience in the diagnosis and treatment of superior semicircular canal dehiscence. [REDACTED] stated that superior semicircular canal dehiscence has already been confirmed radiographically, and after reviewing the Appellant's records, there is nothing further to be done except for the Appellant to proceed with [REDACTED] and to undergo the necessary surgical intervention that he describes. (Exhibit 1, page 38)
15. On [REDACTED], the Peer Review Final Report found, in part, that the Appellant had not met all criteria for out of state services as per the MHP's policy. (Exhibit 1, pages 39-42)
16. On [REDACTED], the MHP sent the Appellant a letter regarding the Level 1 grievance/appeal indicating the denial was upheld. (Exhibit 1, pages 43-45)
17. The MHP received additional medical documentation for a Level 2 Internal review, including a copy of the [REDACTED], CT; another Letter of Medical Necessity and Pre-Authorization Request from [REDACTED] records from [REDACTED] record from [REDACTED], a [REDACTED] letter from [REDACTED] and an [REDACTED] clarification from [REDACTED]

- ██████████ regarding the previous dictation dated ██████████. (Exhibit 1, pages 46-59)
18. On ██████████ wrote a letter in regards to a second opinion for a revision surgery for the Appellant. ██████████ noted no audiologic or vestibular testing was available for review, only the ██████████ CT. ██████████ assessment indicated (1) benign positional vertigo, (2) superior canal dehiscence, right ear, possibly bilateral, and (3) subjective hearing loss. ██████████ indicated the Appellant may benefit from revision surgery and she should be evaluated by a neurootologist with extensive experience with superior canal dehiscence and revision procedures. ██████████ is not comfortable providing that type of care and provided the Appellant with names of several physicians around the county should a revision procedure be necessary. (Exhibit 1, pages 56-58)
 19. ██████████ contacted ██████████ and provided him with a copy of the Appellant's most recent CT report. ██████████ Testimony)
 20. On ██████████ wrote a letter to clarify his previous dictation dated ██████████ stated there are numerous other physicians around the state of Michigan who are well qualified to give the Appellant an adequate opinion about the need for a revision surgery and even to perform the surgery if necessary. (Exhibit 1, page 59)
 21. On ██████████ sent the Appellant a letter withdrawing from providing further professional attendance. (Exhibit 2)
 22. On ██████████, the Appellant requested a formal, administrative hearing contesting the denial. (Request for 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 MHPs.

The Respondent is one of those MHPs.

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), Utilization Management, Contract, October 1, 2009.

The DCH-MHP contract provisions allow prior approval procedures for utilization management purposes. The MHP's Medical Policy outlines the procedure regarding Review of Non-Emergent Out of State Services:

III. Procedure:

- A. The pre-service nurse reviewer will be alerted by the Care Management Specialist that there is a request for non-emergent out of state services. The nurse reviewer will review the request to determine if the requested service is:
 - 1. a Medicaid covered benefit
 - 2. not available from any provider within the state of Michigan
- B. There must be documentation from at least two (2) in state tertiary care centers noting that they are unable to treat the member's condition, and that they are requesting that the member go to an out of state provider for necessary medical care. (Acceptable tertiary care centers include the University of Michigan, the Michigan State University, Detroit Medical Center/Wayne State University, William Beaumont Hospital, Henry Ford Hospital, DeVos Children's Hospital).
- C. Members will not be authorized to go to an out of state provider for second opinions.
- D. The Out of state provider must agree to accept payment based on the Michigan Medicaid fee screen.

All non-emergent out of state requests require review by the Medical Director.

(Exhibit 1, page 62)

The MHP's criteria is consistent with the Medicaid Provider Manual policy, which only allows for prior authorization for non-emergency services to out of state/beyond borderland providers if the service is not available within the state of Michigan and borderland areas. Michigan Department of Community Health Medicaid Provider Manual, General Information for Providers, Section 7.3 Out of State/Beyond Borderland Providers, April 1, 2011, pages 13-14.

In the present case, the Appellant has not met the MHP's medical policy criteria for non-emergent out of state services. The documentation submitted has not established that the requested services are not available from any provider within the state of Michigan. There has not been documentation provided by at least two tertiary care centers noting that they are unable to treat the member's condition, and that they are requesting that the member go to an out of state provider for necessary medical care based on the CT and testing performed after the [REDACTED], surgery.

The Appellant's [REDACTED], CT showed: (1) Essentially normal temporal bone findings bilaterally. Specifically, no findings consistent with semicircular canal dehiscence on dedicated temporal bone imaging. (2) Silastic resurfacing implant material identify anterior to the right temporal bone. (Exhibit 1, pages 20-21 and 46-47)

[REDACTED], letter in support of the Appellant seeking a second opinion with [REDACTED] in [REDACTED] also noted the Appellant recently visited with [REDACTED] for her symptoms. [REDACTED] letter did not indicate she was unable to treat the Appellant or that no other providers in Michigan could treat the Appellant. This letter and most of the additional documentation from [REDACTED] and the Michigan Ear Institute were dated between [REDACTED] and [REDACTED], before the additional testing and CT were performed at the [REDACTED]. The only documentation from the [REDACTED] after the [REDACTED], CT is a telephone memo from a conversation with the Appellant regarding the shifting of the resurfacing material as shown on the [REDACTED] CT. The memo notes the other recent test results were not sent in for review, but the previous testing results and office notes were sent to [REDACTED]. The memo indicates the Appellant reported she has spoken with [REDACTED] about her recent CT, but does not indicate this CT was sent to his office. The memo also indicated there are other possible causes for the Appellant's worsening symptoms. (Exhibit 1, page 13)

[REDACTED] reviewed all of the Appellant's recent testing and CT. [REDACTED] saw the Appellant and declined to write a letter on the Appellant's behalf indicating that [REDACTED] could provide testing and treatment that was not available locally. [REDACTED] noted that the CT the Appellant underwent on [REDACTED], shows no evidence of superior semicircular dehiscence on either side, the images are quite clear, and this finding is unequivocal. [REDACTED] did note that the resurfacing material was not in the vicinity of the superior semicircular canal. (Exhibit 1, pages 3-4 and 14-15) On [REDACTED] wrote a letter to [REDACTED] regarding his second opinion of the Appellant. [REDACTED] indicated he had obtained vestibular-evoked myogenic potentials, electrocochleography, and a repeat CT with reformatted images directed at the superior semicircular canals. The electrocochleography and vestibular evoked myogenic potentials responses were all within normal limits and the CT showed no evidence of superior semicircular canal dehiscence on either side, but it did show the Silastic resurfacing material on the right was not in the vicinity to the superior semicircular canal. [REDACTED] further stated he did not find anything to suggest a perilymphatic fistula and recommended against any further ear surgery for the Appellant's present complaints. (Exhibit 1, page 22)

[REDACTED] wrote a letter in support of the Appellant's request to see [REDACTED] on [REDACTED]. [REDACTED] indicated the Appellant had been seen by [REDACTED], who confirmed persistent findings of superior semicircular canal dehiscence, surgical treatment is the only known treatment, and [REDACTED] is a renowned neuro-otologist with extensive experience in the diagnosis and treatment of superior semicircular canal dehiscence. [REDACTED] stated that superior semicircular canal dehiscence has already been confirmed radiographically, and after reviewing the Appellant's records, there is nothing further to be done except for the Appellant to proceed with [REDACTED] and to undergo the necessary surgical intervention that he describes. (Exhibit 1, page 38) However, [REDACTED] did not indicate what records he reviewed. There is no evidence that Dr. Gianoli has already seen the Appellant. The [REDACTED], CT did not confirm superior semicircular canal dehiscence and no other radiographic evidence since the [REDACTED], surgery has been submitted. [REDACTED] also did not address whether he or any other providers in Michigan could treat the Appellant's condition.

[REDACTED] has written several Letters of Medical Necessity/Pre-Authorization Requests. While there has not been any evidence contesting [REDACTED] experience with superior semicircular canal dehiscence and surgical treatment, this is not sufficient to meet the criteria for non-emergent out of state services. Further, the letters from [REDACTED] do not indicate he has examined the Appellant or what medical records he has reviewed. (Exhibit 1, pages 9-11, 23, 37 and 48) Only one of these letters even notes that that Appellant has had a failed attempt at repair and needs revision surgery. (Exhibit 1, page 23)

[REDACTED] wrote a letter on [REDACTED], in regards to a second opinion for a revision surgery for the Appellant. [REDACTED] noted no audiologic or vestibular testing was available for review, only the [REDACTED] CT. [REDACTED] assessment indicated (1) benign positional vertigo, (2) superior canal dehiscence, right ear, possibly bilateral, and (3) subjective hearing loss. [REDACTED] indicated the Appellant may benefit from revision surgery and she should be evaluated by a neurootologist with extensive experience with superior canal dehiscence and revision procedures. [REDACTED] is not comfortable providing that type of care and provided the Appellant with names of several physicians around the county should a revision procedure be necessary. (Exhibit 1, pages 56-58)

However, [REDACTED] testified he contacted [REDACTED] and provided him with a copy of the Appellant's most recent CT report and that [REDACTED] indicated he had not seen this CT when he wrote the [REDACTED], letter. ([REDACTED] Testimony) On [REDACTED] [REDACTED] wrote a letter to clarify his previous dictation dated [REDACTED]. [REDACTED] stated there are numerous other physicians around the state of Michigan who are well qualified to give the Appellant an adequate opinion about the need for a revision surgery and even to perform the surgery if necessary. (Exhibit 1, page 59) On [REDACTED] [REDACTED] also sent the Appellant a letter withdrawing from providing further professional attendance. (Exhibit 2)

The Appellant disagrees with the denial and testified that [REDACTED] and [REDACTED] reviewed her second CT. However, [REDACTED] letters, even if he had specified what records he reviewed, could not be used to meet the MHP's criteria because [REDACTED] is

not an in state tertiary care provider. [REDACTED] does not indicate what records he reviewed, including what record documents that superior semicircular canal dehiscence has been confirmed radiographically. [REDACTED] also did not address his or any other in state provider's ability to treat the Appellant. (Exhibit 1, page 38)

The Appellant's testimony that [REDACTED] stated he would not do a revision surgery because he did not have the experience is supported by his [REDACTED], letter. (Exhibit 1, pages 56-57) While the [REDACTED], clarification may have been prompted by the contact from the MHP, it does document [REDACTED] opinion that there are providers in Michigan who could treat the Appellant. (Exhibit 1, page 59) Evaluation and treatment by providers in Michigan was not specifically ruled out in the [REDACTED], letter. (Exhibit 1, pages 56-57)

The Appellant's testimony that [REDACTED] told her the resurfacing material was not in the correct place from the [REDACTED], surgery is supported by the [REDACTED], CT and the documentation from [REDACTED]. However, [REDACTED] clearly indicated he did not recommend additional ear surgery for the Appellant's current complaints and he did not support out of state services. (Exhibit 1, pages 3-4, 14-15, 20-22, and 46-47)

The MHP's denial is upheld as their prior approval process is consistent with Medicaid policy and allowable under the DCH-MHP contract provisions, and the documentation submitted did not meet the MHP's criteria for non-emergent out of state services.

DECISION AND ORDER

The ALJ, based on the above findings of fact and conclusions of law, decides that the MHP properly denied the Appellant's request for non-emergent out of state services based on the documentation submitted.

IT IS THEREFORE ORDERED that:

The MHP's decision is AFFIRMED.

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

cc:

[REDACTED]

[REDACTED]
Docket No. 2011-52613 QHP
Decision and Order

Date Mailed: 12/13/2011

***** 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.

