

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

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IN THE MATTER OF:

██████████,

Appellant

Docket No. 2011-33972 QHP
Case ██████████

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 ██████████. ██████████, plastic surgeon, appeared on the Appellant's behalf. ██████████, the Appellant, appeared and testified.

██████████ was represented by ██████████, Appeals Coordinator. ██████████ is a Department of Community Health contracted Medicaid Health Plan (hereinafter MHP). ██████████, Director of Medical Management, and ██████████, Nurse Case Manager, appeared as witnesses for the MHP.

ISSUE

Did the Medicaid Health Plan properly deny the Appellant's request for a panniculectomy/abdominoplasty 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. The Appellant is a ██████ year-old Medicaid beneficiary.
2. On ██████████, the MHP received a Prior Authorization request from the Appellant's plastic surgeon for panniculectomy/abdominoplasty surgery. The request indicated that the Appellant used to have morbid obesity, underwent gastric bypass surgery in ██████████, and now has complaints of excess skin and fat of the lower abdomen causing friction, irritation, and bad smell, which were not getting better with conservative treatment. (Exhibit 1, pages 1-4)

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3. On [REDACTED], the MHP's pharmacist reported that no steroids or anti-fungals had been filled in the previous 6 months. (Appeals Coordinator Testimony and Case Summary)
4. On [REDACTED], the MHP's reviewed the prior authorization request, including clinical and pharmacy information. The Medical Director utilized the Apollo criteria and denied the prior authorization request because the medical criteria were not met. Specifically, the submitted information did not show that the panniculus hangs to or below the level of the pubis and that the presence of the pannus caused chronic intertrigo, candidiasis, or tissue necrosis that remained refractory to conservative medical therapy for more than 6 months. (Appeals Coordinator Testimony, Case Summary, and Exhibit 1, page 5)
5. On [REDACTED], the MHP issued denial letters to the Appellant and the plastic surgeon. (Exhibit 1, pages 6-7)
6. On [REDACTED], the MHP received an appeal request from the Appellant's plastic surgeon, which included letters from the Appellant and her primary care provider. (Exhibit 1, pages 8-10)
7. On [REDACTED], the MHP received an additional photograph of the Appellant. (Exhibit 1, page 11)
8. On [REDACTED], the appeal request and additional information were reviewed by a specialty advisor physician, who agreed with the denial. The special advisor physician noted that while the new evidence shows some skin breakdown, there was no documentation provided showing the use of over the counter or prescriptions for treatment of chronic intertrigo and the photos do not indicate that the pannus hangs at or below the level of the pubis. (Appeals Coordinator Testimony and Case Summary)
9. On [REDACTED] the MHP's Appeals Committee upheld the denial because the documentation provided did not indicate the use of over-the-counter or prescription medications used for the treatment of skin breakdown and photos did not indicate that the pannus hangs at or below the level of the pubis. (Appeals Coordinator Testimony and Case Summary)
10. On [REDACTED], the MHP notified the Appellant's plastic surgeon of the Appeals Committee determination. (Exhibit 1, pages 12-13)
11. On [REDACTED], the Appellant filed a Request for Hearing contesting the denial. Attachments included letters from the Appellant and the plastic surgeon, correspondence with the MHP, and photographs. (Exhibit 2, pages 1-14)

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 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 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 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 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:

:

13.2 COSMETIC SURGERY

Medicaid only covers cosmetic surgery if PA has been obtained. The physician may request PA if any of the following exist:

- The condition interferes with employment.
- It causes significant disability or psychological trauma (as documented by psychiatric evaluation).
- It is a component of a program of reconstructive surgery for congenital deformity or trauma.
- It contributes to a major health problem.

The physician must identify the specific reasons any of the above criteria are met in the PA request.

*Michigan Department of Community Health Medicaid Provider Manual;
Practitioner Version Date: January 1, 2011, Page 65*

Under the DCH-MHP contract provisions, an MHP may devise their own criterion for coverage of medically necessary services, as long as those criterion do not effectively avoid providing medically necessary services.

The MHP utilized the Apollo Medical Review Criteria Guidelines for Managed Care, Plastic & Reconstructive Surgery, Abdominoplasty/Panniculectomy when reviewing the Appellant's prior authorization request:

Abdominoplasty/Panniculectomy

Abdominoplasty is a outpatient surgical procedure tightening a lax anterior abdominal wall, removing excessive abdominal skin, fat, and other tissues. It may be reconstructive or cosmetic ('tummy tuck'). It is reconstructive when performed to correct or relieve structural defects of the abdominal wall and/or chronic low back pain that is clearly due to the abnormally positioned weight of the anterior abdominal wall (when the panniculus hangs to or below the level of the pubis, an indication in itself). Abdominoplasty may be indicated in association with a panniculectomy. Liposuction of abdominal fat is commonly a part of the overall procedure.

A panniculectomy (a large redundant apron of subcutaneous fat and abdominal skin is removed from the lower abdomen. The remaining skin is then pulled down and tightened as with abdominoplasty) may be medically indicated when the

- 1. panniculus hangs to or below the level of the pubis, *and***
- 2. its presence causes chronic intertrigo (i.e. dermatitis occurring on opposed skin surfaces with irritation, infection, or chaffing), candidiasis, or tissue necrosis that remains refractory to conservative medical therapy \geq three to six months. (verify time requirement with member's health plan.) (Emphasis added by ALJ)**

These conditions may be secondary to:

1. Congenital abnormalities
2. Permanent overstretching of the anterior abdominal wall following one or more pregnancies or 9with or without diastasis recti) of the anterior abdominal wall with a large or long abdominal panniculus following weight loss in the treatment of morbid obesity *and* resulting in uncontrollable intertrigo (or crease dermatitis) and/or interfering with the ability to move about freely to perform ADL or ambulate. Trauma or surgery to the anterior abdominal wall resulting in loss of muscle or fascial integrity or pain from scar contracture

3. Abdominal hernia following previous abdominal surgery.

Limitations/exclusions

1. Abdominoplasty is considered cosmetic when performed solely to enhance the appearance in the absence of signs or symptoms of significant functional abnormalities. When cosmetic, it is not a covered benefit under most plans.
2. Repair of diastasis recti is considered cosmetic (not a covered benefit) because this defect has no clinical significance.

Note: Photos, front view, side view, and view with panniculus raise to reveal the skin surface under the panniculus are required documentation prior to submission for authorization review. Aetna requires “In order to distinguish a ventral hernia repair from a purely cosmetic abdominoplasty, Aetna (2006) requires documentation of the size of the hernia, whether the ventral hernia is reducible, whether the hernia is accompanied by pain or other symptoms, the extent of diastasis (separation) of rectus abdominus muscles, whether there is a defect (as opposed to a mere thinning) of the abdominal fascia, and office notes indicating the presence and size of the fascial defect.”

(Exhibit 1, page 5)

These criteria are consistent with the Medicaid standards of coverage for cosmetic surgery, do not effectively avoid providing medically necessary services and are allowable under the DCH-MHP contract provisions.

In this case, the Appellant did not meet the above cited Apollo criteria based on the information available at the time the ██████████, prior authorization request was submitted. The clinical documentation submitted with the ██████████ prior authorization request did not state that the panniculus hangs to or below the level of the pubis nor was this clear from the attached copies of photographs. (Exhibit 1, pages 3-4) The ██████████, office visit note states that the Appellant is “complaining of excess amount of skin and fat of lower abdomen causing friction, irritation and bad smell and these were not getting better with conservative medical treatment.” The note further indicates that a different doctor saw the Appellant on multiple occasions for this problem and that doctor had documented it. (Exhibit A, page 3) However, no documentation from the other doctor was provided. The Appeals Coordinator testified that the MHP also reviewed the Appellant’s pharmacy record and no steroids or anti-fungals had been filled in the six months prior to the ██████████ prior authorization request. The information available to the MHP did not document what conservative treatments had been tried, the results, duration of treatment, frequency of recurrence, etc. Accordingly, the MHP properly denied the prior authorization request on ██████████

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██████████. (Exhibit 1, pages 8-10)

On ██████████, the Appellant's physician provided additional documentation to the MHP. (Exhibit 1, pages 8-11) However, the additional information did not address whether or not the panniculus hangs to or below the level of the pubis, and did not provide any information regarding any conservative treatments for the skin problem. The letter from ██████████ practice indicates that the Appellant has recurrent intertrigo but does not mention anything about conservative treatments. (Exhibit 1, page 9) The Appellant did not meet the Apollo criteria based on the documentation available to the MHP Appeals Committee.

On ██████████, the Appellant's Request for Hearing was received, which included some new documentation. (Exhibit 2, pages 1-14) A ██████████, letter from the plastic surgeon stated that the Appellant "had a panniculus protruding over the pubic hairline area causing sweating and infection, documented by picture and by the patient's letter and also documented by her primary care physician." (Exhibit 2, page 3) The plastic surgeon discussed the position of the panniculus relative to the pubic hairline area, but not the pubis itself. Further, no additional documentation regarding conservative treatments for skin infection was provided with the Request for Hearing. (Exhibit 2)

On ██████████, a copy of a ██████████, prescription and additional photographs were submitted as proposed exhibits for the hearing. The notation on the copy of the prescription indicates that the Appellant "was given a few Rx for my infections. I never got them filled because I had some at home." It is not clear what the Appellant had at home to treat the skin infections. The MHP pharmacy record did not show any filled prescriptions for steroids or anti-fungals in the six months prior to the ██████████, prior authorization request. The plastic surgeon asserted that there would not be any records of over the counter treatments the Appellant may have purchased. While it is true that over the counter treatments would not result in documentation in the Appellant's pharmacy record, no documentation was provided to the MHP regarding any conservative treatments. The Appellant's primary care doctor may have documentation, such as office notes showing what over the counter treatments were tried prior to writing prescriptions, or even if samples of prescription treatments were given to the Appellant.

The evidence submitted for hearing indicates that at least one prescription was given to the Appellant to treat the skin problem, but this was not filled. The evidence does not contain documentation of any specific conservative treatments, over the counter or prescription, which the Appellant has tried. Documentation is needed to show what conservative treatments were tried, the results, how long they were tried, how long before recurrence of infections, etc. to establish that the skin problems remained refractory to conservative medical therapy for more than 6 months. Based on the submitted evidence, the Appellant did not meet the criteria utilized by the MHP, the Apollo Medical Review Criteria Guidelines for Managed Care, Plastic & Reconstructive Surgery, Abdominoplasty/Panniculectomy. The MHP's denial of the requested panniculectomy/abdominoplasty surgery is upheld.


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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 panniculectomy/abdominoplasty surgery based upon the information submitted.

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

cc:



Date Mailed: 9/2/2011

***** NOTICE *****

The Michigan Administrative Hearing System 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.