

**STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

P.O. Box 30763, Lansing, MI 48909  
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

██████████

Appellant

\_\_\_\_\_ /

Docket No. 2011-7632 QHP  
Case No. 78275309

**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 ██████████. ██████████, ██████████, appeared on behalf of the Appellant. Her witness was ██████████, ██████████. ██████████, represented the Medicaid Health Plan (MHP). Her witness was ██████████.

**ISSUE**

Did the MHP properly deny Appellant's request for Vagus Nerve Stimulator Implant?

**FINDINGS OF FACT**

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

1. The Appellant is ██████████ Medicaid beneficiary and is currently enrolled in ██████████. He has a diagnosis of intractable epilepsy. Respondent's Exhibit A, p. 3.
2. The Appellant has generalized seizure disorder as opposed to partial seizure disorder. See Testimony of ██████████ and Respondent's Exhibit A, pp. 9, 17.
3. The Appellant has between 2 – 3 generalized tonic-clonic seizures each month. The Appellant's generalized epilepsy is considered idiopathic. Respondent's Exhibit A, pp. 23, 25.
4. The MHP denied the Appellant's request for authorization of a Vagus Nerve Stimulator Implant claiming the procedure is not a covered benefit

because it is investigational in nature and is not covered by Medicaid. Respondent's Exhibit A, p. 1.

5. The EEG evidence submitted supported a diagnosis of generalized epilepsy seizures as opposed to a qualifying diagnosis of medically intractable partial onset seizure. Respondent's Exhibit A – throughout.
6. The MHP physician reviewer spoke with the Appellant's physician, ██████████, who was reported by ██████████, [on peer to peer review], to have understood the coverage exception for generalized epilepsy. ██████████ reported that he would discuss further appeal rights with the member. Respondent's Exhibit A, p. 4.
7. The instant request for hearing was received by the State Office of Administrative Hearings and Rules on ██████████. 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.

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. 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.

Although the Contractor must provide the full range of covered services listed below they may choose to provide

services over and above those specified. The covered services provided to enrollees under this Contract include, but are not limited to, the following:

- Ambulance and other emergency medical transportation
- Blood lead testing in accordance with Medicaid Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) policy
- Certified nurse midwife services
- Certified pediatric and family nurse practitioner services
- Chiropractic services
- Diagnostic lab, x-ray and other imaging services
- Durable medical equipment (DME) and supplies
- Emergency services
- End Stage Renal Disease services
- Family planning services (e.g., examination, sterilization procedures, limited infertility screening, and diagnosis)
- Health education
- Hearing and speech services
- Hearing aids
- Home Health services
- Hospice services (if requested by the enrollee)
- Immunizations
- Inpatient and outpatient hospital services
- Intermittent or short-term restorative or rehabilitative services (in a nursing facility), up to 45 days
- Restorative or rehabilitative services (in a place of service other than a nursing facility)
- Medically necessary weight reduction services
- Mental health care – maximum of 20 outpatient visits per calendar year
- Out-of-state services authorized by the Contractor
- Outreach for included services, especially pregnancy-related and Well child care
- Parenting and birthing classes
- Pharmacy services
- Podiatry services
- Practitioners' services (such as those provided by physicians, optometrists and dentists enrolled as a Medicaid Provider Type 10)
- Prosthetics and orthotics

- Tobacco cessation treatment including pharmaceutical and behavioral support
- Therapies (speech, language, physical, occupational) excluding services provided to persons with development disabilities which are billed through Community Mental Health Services Program (CMHSP) providers or Intermediate School Districts.
- Transplant services
- Transportation for medically necessary covered services
- Treatment for sexually transmitted disease (STD)
- Vision services
- Well child/EPSTD for persons under age 21

Article 1.020 Scope of [Services], at §1.022 E (1) contract, 2010, p. 22.

Furthermore the Medicaid Provider Manual (MPM) prohibits the various MHPs [including ██████████] from providing experimental procedures.

**[ ] SERVICES THAT MHPs ARE PROHIBITED FROM COVERING**

- Elective therapeutic abortions and related services. Abortions and related services are covered when medically necessary to save the life of the mother or if the pregnancy is a result of rape or incest;
- Experimental/Investigational drugs, procedures or equipment;
- Elective cosmetic surgery; and
- Services for treatment of infertility (Emphasis supplied)

MPM, Medicaid Health Plans, §1.3, January 1, 2011, page 3

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The Appellant's representatives testified that they hoped for some life saving process to help the Appellant with his seizures. They added that the Appellant has "quite a few seizures." The Appellant's representative queried the MHP witness on the potential for a "trial procedure" – even though the evidence could not pin-point the source of the seizures in the Appellant's brain.

██████████ testified that, "Medicaid does not cover experimental or investigational procedures – but that these procedures are approved [ ] when the patient meets clinical criteria," which was not present in today's record.

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The MHP witness further testified that the overwhelming diagnostic and clinical evidence supported the non-qualifying diagnosis of generalized seizure in the Appellant. The coverage denial was reviewed between physicians on a peer to peer consultation. See Respondent's Exhibit A – throughout.

Pursuant to its contract with the Department, a Medicaid Health Plan is not required to provide a service, procedure, or medical equipment deemed experimental and/or investigational in nature. Furthermore, under the MPM the various health plans are flatly prohibited from providing such services.

The MHP's denial of the requested procedure/equipment is proper.

**DECISION AND ORDER**

Based on the above findings of fact and conclusions of law, I decide the MHP has properly denied the Appellant's request for Vagus Nerve Stimulator Implant.

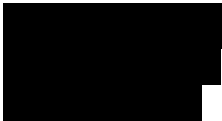
**IT IS THEREFORE ORDERED** that:

The Medicaid Health Plan's decision is **AFFIRMED**.

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

cc:



Date Mailed: 3/18/2011

**\*\*\* NOTICE \*\*\***

The State Office of Administrative Hearings and Rules 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 State Office of Administrative Hearings and Rules 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.