

**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:

██████████,

Appellant

Docket No. ██████████
Case No. ██████████

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 ██████████. ██████████, the Appellant, was represented by her guardian and mother, ██████████. Her CMH case manager ██████████, appeared on her behalf. ██████████, was present at hearing. ██████████, Appeals Review Officer, represented the Department. ██████████, Medical Consultant, appeared as a witness for the Department.

ISSUE

Did the Department properly deny the Appellant's prior authorization request for breast reduction 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 Department received a prior approval request for breast reduction surgery for the Appellant.
3. On ██████████, the Department of Community Health notified the Appellant the request had been denied.
4. Additional information was sent to the Department of Community Health by the Appellant's prospective plastic surgeon, which was reviewed by Department consultant ██████████.
5. The surgeon's office/clinical note from ██████████ of ██████████ showed complaints of back, neck and should pain for greater than ██████ months.

Additionally the Appellant is documented to have rashes under her breasts which are unresponsive to medical or conservative treatment, which had included use of antifungal, powders, crèmes and salves. The Appellant is further noted to have paresthesias down both arms directly attributed to weight of her breasts on her chest wall and shoulder girdle.

6. The documentation submitted further states the Appellant participated in special exercises designed to alleviate pain. The exercises have failed. She has been fitted with specialty bras which have failed to correct the pain or bra strap grooving. She has also used hot and cold therapies to alleviate pain, which has not worked.
7. The documentation submitted indicates she is diagnosed with 611.1 hypertrophy of breast, 695.89 erythematous cond ot, 723.1 cervicgia and 738.3 acquir chest deformity.
8. The Department of Community Health reviewer testified the documentation submitted by the prospective plastic surgeon is “standard language” and insufficient to establish the standards of coverage are met.
9. The Department of Community Health reviewer stipulates pain is a medical condition. She asserts additional testing could be performed to establish the cause of pain and that the Appellant’s breast size is not definitively medically established as the cause.
10. On [REDACTED], the Department issued a Notification of Denial to the Appellant stating the prior authorization request for breast reduction surgery was denied under the Medicaid Provider Manual Policy. Specifically, criteria for coverage of cosmetic surgery are not met through documentation submitted.
11. On [REDACTED], the Michigan Administrative Hearing System received the Appellant’s hearing request.

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.

The Medicaid Provider Manual addresses treatment for cosmetic surgery:

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.

Physicians should refer to the General Information for Providers Chapter for specific information for obtaining authorization.

*MDCH Medicaid Provider Manual,
Practitioner Section,
January 1, 2012, pages 62-63*

In the present case, the Department's Medical Consultant explained that the information submitted with the prior authorization request did not establish that the criteria for coverage of cosmetic surgery are met. She noted the documentation showed large breasts, neck pain and back pain. However, there was insufficient documentation to show that the large breasts were the cause of the Appellant's neck and back pain and other possible causes had been ruled out. The Medical Consultant stated that the submitted documentation contained what she described as "standard language" and that testing had not been performed to establish the cause of the reported paresthesias. She further stated that if the Appellant lost weight her breasts would become smaller and that surgery is not the only means of achieving smaller breast size. Accordingly, the Department denied the Appellants prior authorization request for breast reduction surgery.

The Appellant's representative disagrees with the denial. Testimony was presented indicating the pain she has as a result of breast size interferes with her ability to exercise, inhibits her desire to participate in community activities and causes her to be treated inappropriately by others. The Appellant is cognitively limited and not engaged in competitive employment. She has asthma and her large breast makes it more difficult to breathe. It was further asserted the overall quality of the Appellant's life will improve if this pain is alleviated; she will have enhanced ability to exercise and less anxiety about community participation. The surgery will allow her to achieve an enhanced quality of

life.

The medical documentation submitted show large breasts, neck pain, back pain, shoulder grooving, and numbness in hands bilaterally. However, the Department reviewer discounted the value of the records submitted because she believes they contain standard language. This ALJ is persuaded they document actual medical conditions the Appellant is experiencing. The complaints of pain are found credible by this ALJ, as are the reports of numbness in her hands. The Department reviewer asserted more documentation could be submitted definitively establishing other possible causes for the pain have been ruled out. It is not known how many other possible conditions must be ruled out before the logical conclusion that having large, pendulous breasts cause back pain, shoulder pain, neck pain, and shoulder grooving is acknowledged by the Department's reviewers. The requesting provider is a medical doctor and has made the finding that the size and shape of the Appellant's breasts are the cause of her shoulder, neck and back pain as well as numbness in her arms and hands. This ALJ accepts this medical finding.

While this ALJ does find the Appellant and her provider fully credible, unfortunately this is inadequate to find she has met the standards of coverage for the surgery requested. The Department reviewer asserted that surgery is not the only means of achieving smaller breast size and noted the Appellant's BMI in her testimony. This ALJ cannot disregard this factor of the Department's denial, despite the credible evidence of a need for pain relief and the cause of pains. According to the Department's physician reviewer, the surgery sought is not the only means to resolve the medical conditions which may be the result of the Appellant's breast size. There is evidence of some conservative treatment, i.e., physical therapy and hot and cold packs, however, no evidence of weight loss. This ALJ relies on the testimony from the Department reviewer to find the Appellant has not established the surgery sought is medically necessary because the Appellant's BMI is still high and not going down.

A new prior authorization request can always be submitted with supporting documentation.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department was within its rights to deny the Appellant's prior authorization request for breast reduction surgery based upon the available information.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

/S/

Jennifer Isiogu
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

cc: [REDACTED]

Date Mailed: 9/17/12

***** 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.