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) 373-4147

IN THE MATTER OF:

Docket No. 2013-22140 PA
Case No.

,

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 . , Appellant's father, and , Appellant's mother, appeared and testified on Appellant's behalf. , Appeals Review Officer, represented the Respondent, Department of Community Health (DCH or Department). , MD, Medical Consultant, Office of Medical Affairs, appeared as a witness for the Department.

ISSUE

Did the Department properly deny the Appellant's prior authorization request for care and treatment at Hospital?

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 old Medicaid beneficiary, born , who was born with an anorectal malformation, imperforate anus with a paravaginal or vestibular perianal fistula. (Exhibit A, pp 12-13, 20)

2. Appellant initially underwent a successful posterior sagittal anorectoplasty (PSARP) procedure in , Michigan, but about two weeks postoperatively, she developed a perianal fistula right at the previous congenital fistula site. This was managed with a diverting colostomy for about two weeks to see if the fistula would heal, however after several months, the fistula had not completely closed and a distal colostogram x-ray identified a very small anterior fistula. (Exhibit A, p 20)

3. Per Appellant's parent's request, Appellant's doctor in referred Appellant to at the University of , where their department specializes in colorectal and anal surgeries in children. (Exhibit A, p 20)

4. On or about , the Department received a prior authorization request for care and treatment of Appellant at . (Exhibit A, pp 9, 12)

5. On , the prior authorization request was reviewed by a physician, who denied the request for care and treatment at Hospital because the Department will only authorize non-emergency services to out of state/beyond borderland providers if the service is not available within the State of Michigan or borderland areas. The reviewing physician determined that the service was available in Michigan at the ( ) Hospital. (Exhibit A, pp 6, 9, 11; Testimony)

6. On , the Department issued a Notification of Denial to the Appellant. (Exhibit A, pp 6, 9)

7. On , the Michigan Administrative Hearing System received the hearing request filed on the Appellant's behalf. (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.

The Medicaid Provider Manual provides, in pertinent part, as follows:

> **7.3 OUT OF STATE/BEYOND BORDERLAND PROVIDERS [CHANGE MADE 4/1/13]**
>
> Reimbursement for services rendered to beneficiaries is normally limited to Medicaid-enrolled providers.
>
> MDCH reimburses out of state providers who are beyond the borderland area (defined below) if the service meets one of the following criteria:
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> - Emergency services as defined by the federal Emergency Medical Treatment and Active Labor Act (EMTALA) and the Balanced Budget Act of 1997 and its regulations; or

- Medicare and/or private insurance has paid a portion of the service and the provider is billing MDCH for the coinsurance and/or deductible amounts; or

- The service is prior authorized by MDCH. MDCH will only prior authorize non-emergency services to out of state/beyond borderland providers if the service is not available within the state of Michigan and borderland areas.

Note for Hospice Providers: An out-of-state/borderland hospice provider cannot cross over the border into Michigan to provide services to a Medicaid beneficiary unless:

- The agency is licensed and Medicare-certified as a hospice in Michigan; or

- The state in which the provider is licensed and certified has a reciprocal licensing agreement with the State of Michigan.

If one of these conditions is met and the hospice provides services across state lines, its personnel must be qualified (e.g., licensed) to practice in Michigan.

Medicaid will not cover services for a beneficiary who enters a hospice-owned residence outside of Michigan. The Community Health Automated Medicaid Processing System (CHAMPS) will not recognize the core-based statistical area (CBSA) code of another state. Additionally, when a Michigan Medicaid beneficiary voluntarily enters a hospice-owned residence in another state to receive routine hospice care, they are no longer considered a Michigan resident and, therefore, are not eligible for hospice benefits under Michigan Medicaid.

Note for Home Health Providers: An out-of-state/borderland home health provider cannot cross over the border into Michigan to provide services to a Medicaid beneficiary unless they are Medicare certified as a home health agency in Michigan. If this condition is met, and the home health agency provides services across state lines, its personnel must be qualified (e.g., licensed) to practice in Michigan.

Note for Nursing Facilities: The only borderland nursing facilities that are allowed to enroll with Michigan Medicaid are those facilities where Michigan beneficiaries were admitted to the facilities prior to October 1, 2007 or were admitted where placement was approved by Medicaid due to closure of a Michigan facility. To ensure that these borderland nursing facilities serving Michigan Medicaid beneficiaries have a current standard Health Survey, a Life Safety Code Survey, and a current facility license,

MDCH requires this information be sent to MDCH each year. The review of survey and license information by MDCH will occur prior to December 31 of each year. This information must be received by the Medicaid Provider Enrollment Unit by November 1 of each year so the borderland nursing facility Medicaid enrollment continues. (Refer to the Directory Appendix for contact information.) **(text added per bulletin MSA 12-57)**

Managed Care Plans follow their own Prior Authorization criteria for out of network/out of state services. Providers must be licensed and/or certified by the appropriate standard-setting authority.

All providers (except pharmacies) rendering services to Michigan Medicaid beneficiaries must complete the on-line application process described in the Provider Enrollment Section of this Chapter in order to receive reimbursement. Exceptions to this requirement may be made in special circumstances. These circumstances will be addressed through the Prior Authorization process. Pharmacies must complete the enrollment process with MDCH's PBM. Refer to the Provider Enrollment Section of this Chapter for additional information. (Emphasis added)

Medicaid Provider Manual
General Information for Providers Section
April 1, 2013[1], pp 12-13

SECTION 10 – OUT-OF-STATE MEDICAL CARE

CSHCS covers out-of-state **emergency** medical care when services are related to the qualifying diagnosis. Emergency medical care is defined as a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that a prudent layperson, with an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in:

- Serious jeopardy to the health of the client;
- Serious impairment to bodily functions; or
- Serious dysfunction of any bodily organ or part.

Non-emergency medical care related to the qualifying diagnosis is defined as not meeting the definition of emergency medical care stated above. Out-of-state non-emergency medical care is covered only when the service has been prior authorized by MDCH. Prior authorization requests

[1] The additions made to this section of the MPM on April 1, 2013 do not impact Appellant's request.

for out-of-state services may be approved when all of the following criteria are met:

- The requested service is related to the CSHCS qualifying diagnosis;
- The request for out-of-state referral is submitted by the appropriate, CSHCS-authorized in-state subspecialist with whom the client will maintain a relationship following the out-of-state services, explaining the reason the requested service must be provided out-of-state;
- The in-state subspecialist and the out-of-state specialist maintain a collaborative relationship with regard to determining, coordinating, and providing the client's medical care, including a plan to transition the client back to in-state services as appropriate;
- Comparable care (the term "comparable care" does not require that services be identical) for the CSHCS qualifying diagnosis cannot be provided within the State of Michigan;
- The requested service is accepted within the context of current medical standards of care as determined by MDCH;
- The service has been determined medically necessary by MDCH because the client's health would be endangered if he were required to travel back to Michigan for services, if applicable.

All out-of-state providers must complete the Community Health Automated Medicaid Processing System (CHAMPS) enrollment process described in the Provider Enrollment Section of the General Information for Providers Chapter to submit claims to MDCH. Out-of-state pharmacies must be enrolled with the MDCH Pharmacy Benefits Manager to submit claims for payment.

Medical care provided in borderland areas is allowed without application of the Out-of-State Medical Care criteria if the provider is enrolled in the Michigan Medicaid Program. Borderland is defined as counties outside of Michigan that are contiguous to the Michigan border and the major population centers (cities) beyond the contiguous line as recognized by MDCH. (Refer to the General Information for Providers Chapter of this manual for additional information.)

The LHD CSHCS offices authorize and assist families with travel for care received in borderland areas in the same manner as for travel in state.

> Refer to the Travel Assistance section of this chapter for specific information. (Emphasis added).

Medicaid Provider Manual
Children's Special Health Care Services Section
April 1, 2013[2], p 20

The Department's witness testified that Appellant's prior authorization request for care and treatment at Hospital was denied because the Department will only authorize non-emergency services to out of state/beyond borderland providers if the service is not available within the State of Michigan or borderland areas. The Department witness testified that they contacted the Hospital at the , who indicated that they could do the surgery Appellant needs.

Appellant's father testified that Appellant already had surgery in Michigan, but that an extremely rare complication developed. Appellant's father indicated that he had recently met with at , who indicated that he could do the surgery, but Appellant's father felt that the surgeons at Hospital are still more experienced because they see 80-100 patients a year with conditions similar to Appellant. could not tell Appellant's father specifically how many such surgeries he has performed. Appellant's father indicated that a doctor they found at in had performed only about 1-2 of these surgeries a year and a total of only 20-25 over the course of his career. Appellant's father indicated that he is concerned that if the surgery is done in , further complications will ensue, resulting in further surgeries, which will result in Appellant possibly becoming incontinent for life, as well as other lasting complications.

Appellant's mother testified that the surgery requested is very delicate and complex given the large number of nerves and muscles in the surgical area. Appellant's mother testified that a surgeon operating in this area needs experience and that a lack of experience could lead to complications that could damage Appellant for life. Appellant's mother testified that she and her husband simply want to minimize that risk by going to the most experienced surgeon.

The Department's witness testified that if felt that they could not perform the surgery, or that Appellant would be better served by Hospital, could submit a referral to the Department, which would be considered. In response, Appellant's father testified that they had already approached about such a referral, but that he was unwilling to make the referral because he felt that he could do the surgery.

Based on the evidence and documentation submitted, Appellant did not prove, by a preponderance of evidence, that the care and treatment requested to be done at Hospital could not be done in Michigan. The Department identified

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[2] This version of the MPM is identical to the version in effect at the time of the denial.

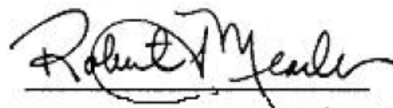
Hospital as a facility in Michigan where the surgery can be performed and the Appellant's parents identified another doctor at Hospital in who indicated that he could do, and has done, the surgery requested. While it is certainly understandable that Appellant's parents would like the surgery done by the most experienced surgeon available, the Medicaid Provider Manual (MPM) makes it clear that care and treatment will not be approved out of State if the care and treatment can be done in Michigan. The Policy makes no provision for finding the most experienced doctor in the country and, as a practical matter, if every Medicaid recipient could demand care and treatment at the most experienced provider in the country, the system would certainly fail. It would appear that the Appellant's only option would be to get a referral from for the surgery to be done at Hospital. As much as this administrative law judge might sympathize with Appellant and her family, he cannot ignore the clear policy found in the MPM. Accordingly, the Department's denial must be upheld.

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 care and treatment at Hospital.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.



Robert J. Meade
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

cc:

Date Signed: June 4, 2013

Date Mailed: June 4, 2013

***** 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.