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:

[redacted]

Docket No. 2013-48583 QHP
Case No. [redacted]

Appellant
_____/

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 on [redacted]. [redacted], Appellant's mother appeared and testified on Appellant's behalf. [redacted], Director, Medicaid Operations, represented [redacted], the Medicaid Health Plan (MHP).

ISSUE

Did the MHP properly deny Appellant's request for Core Decompression Surgery?

FINDINGS OF FACT

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

1. Appellant is an [redacted] year old female Medicaid beneficiary who is currently enrolled in the Respondent MHP. Appellant is diagnosed with Legg-Calve-Perthes Disease. (Exhibit A, p 1; Exhibit 1, pp 2-4; Testimony)

2. On or about [redacted], the MHP received a request for authorization of out of network Core Decompression Surgery from Dr. [redacted], to be performed by Dr. [redacted] at the [redacted] Institute for Advanced Orthopedics in [redacted]. (Exhibit A, p 2; Exhibit 1, pp 3-4; Testimony)

3. On [redacted], the MHP sent the Appellant a denial notice stating that the request was denied because the requested surgery was determined by the MHP's Medical Director to be experimental, investigational, or unproven. (Exhibit A, pp 2, 5; Exhibit 1, p 5; Testimony)

4. On [redacted], the Appellant's Request for Hearing was received by the Michigan Administrative Hearing System. (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 (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 coverage(s) and limitations. (Emphasis added by ALJ)* 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.
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> *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:
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> - 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 coverage(s) 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.

The DCH-MHP contract provisions require that all services provided be medically necessary. The MHP's Policy with regard to Experimental/Investigational/Unproven Care is found in policy No. 91117-R5, which states:

Any drug, device, treatment or procedure that is experimental, investigational, or unproven is a non covered service when any of the following apply:

1. The drug or device cannot be lawfully marketed in the United States without the approval of the Food and Drug Administration (FDA) and that approval has not been granted.
2. The drug, device, treatment or procedure is provided pursuant to oversight by an institutional review board or other body that approves or reviews research concerning safety, toxicity or efficacy.
3. The patient informed consent documents describe the drug, device, treatment or procedure as experimental or investigational or in other terms that indicate the service is being evaluated for its safety, toxicity or efficacy.
4. Reliable evidence shows the drug, device, treatment or procedure is subject of on-going Phase I or Phase

> II clinical trials: is the research, experimental, study or investigation arm of on-going Phase III clinical trials; or is otherwise under study to determine its toxicity, safety, or efficacy as compared with a standard means of treatment or diagnosis.
> 5. Reliable evidence shows that the prevailing opinion among experts regarding the drug, device, treatment or procedure is that further studies or clinical trials are necessary to determine its toxicity, safety, or efficacy as compared with a standard means of treatment or diagnosis.
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> Exhibit 1, p 5

The MHP's Director of Medicaid Operations (MHP Director) testified that Appellant is an enrolled member of Priority Health and, at the time of enrollment, was sent a Member Handbook and Certificate of Coverage, which outlined the coverage limitations, prior authorization requirements, limitation and exclusions, and pharmacy guidelines of the Plan. The MHP Director testified that they received a request from Dr. [redacted] on [redacted] for coverage of core decompression surgery through a nonparticipating practitioner. The MHP Director testified that the request was reviewed by the MHP's Medical Director, who determined, after consulting with Appellant's physician, that the request had to be denied because the requested procedure was experimental, investigational and unproven.

In a report dated [redacted], the MHP's Medical Director indicated that he had an extensive conversation with Appellant's doctor regarding the prior authorization request. Appellant's doctor had recommended that Appellant undergo an osteotomy, which is considered the standard of care for Appellant's condition. However, Appellant's mother found an alternative procedure performed by Dr [redacted] at the [redacted] Institute for Advanced Orthopedics in [redacted]. Dr. [redacted] proposed a core decompression with the application of an external fixator. The MHP's Medical Director indicated that the decompression procedure is done in patients with another type of condition, slipped capital femoral epiphysis. The MHP Medical Director testified that, to his knowledge, the decompression has never been done, or at least reported, in patients under age [redacted], primarily because the decompression, which involves coring out the bone and improving vascularity to the femoral head, increases the risk of premature closure of the epiphyseal plate and almost certain limb length discrepancy. Limb length discrepancies, if severe, require additional surgery. The MHP's Medical Director indicated in his report that based on this information, he determined that the requested procedure was experimental, investigational and unproven and denied the prior authorization request. (Exhibit A, p 6)

Appellant's mother testified that if Appellant is treated with a femoral osteotomy, the procedure will change the anatomy of her daughter by cutting the bone and repositioning the femur or pelvis to help the ball point towards the acetabulum in hopes

that the ball will grow back more circular. Appellant's mother indicated that the negative effects, besides changing the anatomy of the body, include limping, infection, blood clot, and more surgery. Appellant's mother indicated that the procedure proposed by Dr. [redacted] is less invasive. Appellant's mother testified she has learned that the success rate for persons in Appellant's position with the recommended osteotomy are not vary high and will likely lead to more surgeries. Appellant's mother indicated that she has spoken to the families of five children who have had the core decompression surgery performed by Dr. [redacted] and all are doing well. Appellant's mother testified that her doctor, Dr. [redacted], simply stated that she thought the core decompression surgery would be traumatic for Appellant; she did not indicate that it was experimental or unproven. Appellant's mother indicated that while the procedure may be traumatic at first, the long-term results seemed better. Appellant's mother also testified that through her research she has discovered that the major insurance companies in the United States have all referred patients to Dr. [redacted] for core decompression.

In a letter dated [redacted], Dr. [redacted] wrote that he would propose a more minimally invasive technique of core decompression with bone stem cell graft injection into the femoral head to rapidly heal the epiphysis while concurrently Botoxing the abductor muscles of the inner thigh and using a postop abduction orthosis. Dr. [redacted] wrote that this procedure had been well documented in peer review literature by the physician Dr. [redacted] from [redacted] who has vast experience. Dr. [redacted] indicated that he has performed well over 200 core decompressions with greater than 70% success rate, being defined as negating any further surgical procedures needed for the patient. Dr. [redacted] wrote that his experiences in this area are currently being published. (Exhibit 1, p 6)

Under its contract with the Department, an MHP may devise criterion for coverage of medically necessary services, as long as those criteria do not effectively avoid providing medically necessary services. The MHP's approval process for experimental, investigational or unproven treatment is consistent with Medicaid policy and allowable under the DCH-MHP contract provisions. Here, the procedure proposed by Dr. [redacted] falls within the policy for experimental, investigational or unproven treatment given that the procedure has not been widely performed in patient's under [redacted] because the procedure would increase the risk of premature closure of the epiphyseal plate and almost certain limb length discrepancy, which would result in more surgery. While the undersigned can sympathize with Appellant's family, and can respect their seeking the best care for their daughter, he cannot contradict clear Medicaid policy. The MHP's determination must be upheld based on the evidence on record.

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 out of network Core Decompression Surgery based on the submitted documentation.

IT IS THEREFORE ORDERED that:

The Medicaid Health Plan's decision is AFFIRMED.

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

RJM/skb

cc: [redacted]

Date Signed: 6/5/2013

Date Mailed: 6/5/2013

***** 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.