

**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:

██████████,

Appellant.

_____ /

Docket No. 2013-56630 QHP
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.*, and upon a Request for Hearing filed by Appellant.

After due notice, a hearing was held on ██████████. Appellant appeared and testified on her own behalf. ██████████, Appeals Coordinator, represented ██████████, the Respondent Medicaid Health Plan ("MHP"). Dr. ██████████, a Medical Director at the MHP, testified as a witness for Respondent.

ISSUE

Did the MHP properly deny Appellant's request for outpatient therapy?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Appellant is a ██████ year-old Medicaid beneficiary enrolled in the Respondent MHP. (Respondent's Exhibit A, page 3).
2. In ██████, Appellant underwent a mastopexy and augmentation of her right breast. (Respondent's Exhibit A, page 6). She also had a reduction mammoplasty on her left breast. (Respondent's Exhibit A, page 5).
3. On or about ██████████, the MHP received a prior authorization request for a surgical procedure for Appellant in order to achieve symmetry in her breasts. (Respondent's Exhibit A, page 3).
4. A letter from Appellant's doctor accompanied that prior authorization request. (Respondent's Exhibit A, page 5). In that letter, Appellant's doctor wrote:

██████████ is seen in the ██████████ office on ██████████.
██████████. The patient has been seen again

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because she now has a nine-month old baby. As a consequence of the pregnancy, the patient has developed more asymmetry between the reconstructed breast, the right breast, and the breast which had the reduction mammoplasty, the left breast. She would like to have a surgical procedure to achieve symmetry.

I had the opportunity to examine the patient again today. Since the last time, which was on [REDACTED], and I can see definitely that there is an accentuation of the asymmetry. I can see that she is slightly larger on the right breast and some atrophy on the left breast.

The patient definitely would be improved in the symmetry that she has from a congenital malformation of the left breast if we can modify the condition with a slight augmentation of the left breast or change the implant for a smaller size on her contralateral breast. The patient would prefer to have an augmentation on the left breast. I have included a photograph of the patient, pre-operatively and post-operatively, for you to evaluate and then for an approval for an augmentation of the left breast with a small implant.

5. The MHP denied that prior authorization request on the basis that it was a non-covered cosmetic surgery. (Testimony of Dr. [REDACTED]).
6. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received the Request for Hearing filed by Appellant in this case. (Petitioner's Exhibit 1, page 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.

In 1997, the Department received approval from the Health Care Financing Administration, U.S. Department of Health and Human Services, allowing Michigan to

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restrict Medicaid beneficiaries' choice to obtain medical services only from specified Medicaid Health Plans. The Respondent is in one of those Medicaid Health Plans.

The Respondent is one of those MHPs. With respect to such MHPs, their contract with the Michigan Department of Community Health ("MDCH" or "Department") provides:

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

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- 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
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- Treatment for sexually transmitted disease (STD)
 - Vision services
 - Well child/EPSTD for persons under age 21

*Section 1.022(E)(1), Covered Services.
MDCH contract (Contract) with the Medicaid Health Plans,
October 1, 2009.*

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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.”

In this case, the pertinent section of the Michigan Medicaid Provider Manual (MPM) provides in part:

8.3 NONCOVERED SERVICES

The items or services listed below are not covered by the Medicaid program:

- Acupuncture
- Autopsy
- Biofeedback
- All services or supplies that are not medically necessary
- Experimental/investigational drugs, biological agents, procedures, devices or equipment
- Routine screening or testing, except as specified for EPSDT Program or by Medicaid policy
- Elective cosmetic surgery or procedures

*MPM, April 1, 2013 version
General Information for Providers Chapter, page 15*

Pursuant to that policy, the MHP denied the prior authorization request for a surgery to achieve symmetry between Appellant’s breasts on the basis that is a non-covered cosmetic surgery.

In response, Appellant testified that the reasons for the surgery go beyond mere cosmetics and that there are both psychological and physical health reasons justifying the surgery.

However, no such reasons are offered in the prior authorization request itself and it appears to be requesting the surgery solely to achieve symmetry for cosmetic reasons.

This Administrative Law Judge is limited to reviewing the MHP’s decision in light of the information the MHP had at the time it made that decision. Here, given that the prior

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authorization request only identified cosmetic reasons as the basis for the surgery the MHP properly denied that request.

To the extent Appellant has additional reasons she is requesting the surgery, she is free to re-request the surgery from the MHP at any time. The request at issue in this case, however, was properly denied.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the MHP properly denied Appellant's request for surgery.

IT IS THEREFORE ORDERED that:

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



Steven Kibit
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

Date Signed: 9/20/2013

Date Mailed: 9/20/2013

cc:

***** 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 60 days of the mailing date of the Decision and Order or, if a timely request for rehearing was made, within 60 days of the mailing date of the rehearing decision.