

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**
P.O. Box 30763, Lansing, MI 48909
(517) 335-2484; Fax: (517) 373-4147

IN THE MATTER OF:

██████████,

Appellant.

Docket No. 14-0139811 MHP¹

██████████ ██████████

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 the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. Appellant appeared and testified on his own behalf. ██████████, legal counsel, represented ██████████ ██████████, the Respondent Medicaid Health Plan (MHP). ██████████, Member Satisfaction Coordinator, testified as a witness for Respondent.

ISSUE

Did the MHP properly deny Appellant's request for bariatric 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. Appellant is a ██████ year-old Medicaid beneficiary who is enrolled in the Respondent MHP and who has been diagnosed with obesity. (Respondent's Exhibit B, page 3; Testimony of ██████████).
2. On or about ██████████, the MHP received a prior authorization request for bariatric surgery for Appellant. (Respondent's Exhibit B, pages 1-12).
3. Attached to that request was an ██████████ Psychological Report from ██████████. (Petitioner's Exhibit 1, page 5-6; Respondent's Exhibit B, pages 6-10).

¹ Prior to the hearing, this matter was mistakenly coded as an MHF case rather than an MHP case. The case code has now been corrected and the undersigned Administrative Law Judge would also note that case codes are used strictly for administrative purposes and have no effect on the decision.

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4. In that report, ██████████ concluded:

This examinee does clearly appear motivated to participate in gastric bypass surgery. However, at this time, I am going to request that this individual's disposition be reviewed by the entire bariatric team.

To reiterate, this examinee's current surgical disposition will need to be reviewed by the entire bariatric team. Determination for his appropriateness for bariatric surgery will be made at the time of this review.

Petitioner's Exhibit 1, pages 5-6

5. On ██████████, the MHP sent Appellant written notice that his request for bariatric surgery was denied. (Respondent's Exhibit D, pages 1-2).

6. Regarding the reason for the denial, the notice stated that:

This decision is based on the ██████████ Reference and Control Operational Guideline for Obesity Medical/Surgical Management that shows all criteria must be met, including a psychological evaluation (MMPI-II) conducted by an appropriate physician other than the surgeon that shows you are a good candidate for bariatric surgery; before bariatric surgery is considered for coverage. Your MMPI-II findings show that you are not a candidate for bariatric surgery. The request for bariatric surgery is not covered.

Respondent's Exhibit D, page 1

7. On ██████████, the Michigan Administrative Hearing System (MAHS) received the Request for Hearing filed by Appellant in this matter. (Petitioner's Exhibit 1, pages 1-6).

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 restrict Medicaid beneficiaries' choice to obtain medical services only from specified Medicaid Health Plans.

The Respondent is one of those MHPs and, as provided in the Medicaid Provider Manual (MPM), is responsible for providing covered services pursuant to its contract with the Department:

The Michigan Department of Community Health (MDCH) contracts with Medicaid Health Plans (MHPs), selected through a competitive bid process, to provide services to Medicaid beneficiaries. The selection process is described in a Request for Proposal (RFP) released by the Office of Purchasing, Michigan Department of Technology, Management & Budget. The MHP contract, referred to in this chapter as the Contract, specifies the beneficiaries to be served, scope of the benefits, and contract provisions with which the MHP must comply. Nothing in this chapter should be construed as requiring MHPs to cover services that are not included in the Contract. A copy of the MHP contract is available on the MDCH website. (Refer to the Directory Appendix for website information.)

MHPs must operate consistently with all applicable published Medicaid coverage and limitation policies. (Refer to the General Information for Providers and the Beneficiary Eligibility chapters of this manual for additional information.) Although MHPs must provide the full range of covered services listed below, MHPs may also choose to provide services over and above those specified. MHPs are allowed to develop prior authorization requirements and utilization management and review criteria that differ from Medicaid

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requirements. The following subsections describe covered services, excluded services, and prohibited services as set forth in the Contract.

*MPM, October 1, 2014 version
Medicaid Health Plan Chapter, page 1
(Emphasis added by ALJ)*

As stated above, a MHP “must operate consistent with all applicable Medicaid Provider Manuals and publications for coverages and limitations.” Here, the pertinent section of the MPM states:

4.21 WEIGHT REDUCTION

Medicaid covers treatment of obesity when done for the purpose of controlling life-endangering complications, such as hypertension and diabetes. If conservative measures to control weight and manage the complications have failed, other weight reduction efforts may be approved. The physician must obtain PA for this service. Medicaid does not cover treatment specifically for obesity or weight reduction and maintenance alone.

The request for PA must include the medical history, past and current treatment and results, complications encountered, all weight control methods that have been tried and have failed, and expected benefits or prognosis for the method being requested. If surgical intervention is desired, a psychiatric evaluation of the beneficiary's willingness/ability to alter his lifestyle following surgical intervention must be included.

If the request is approved, the physician receives an authorization letter for the service. A copy of the letter must be supplied to any other provider, such as a hospital, that is involved in providing care to the beneficiary.

*MPM, October 1, 2014 version
Practitioner Chapter, page 41 (Emphasis added)*

Similarly, pursuant to the authority granted under both its contract with the Department and the language of the MPM, the MHP has developed utilization management criteria with respect to bariatric surgeries. (Respondent's Exhibit C, pages 1-9; Testimony of [REDACTED] Among that criteria is the specific requirement that:

A thorough Behavioral Health assessment and evaluation, preferably including the Minnesota Multiphasic Personality

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Inventory (MMPI) II test, must be performed by a [REDACTED] contracted provider order [sic] to establish the member's emotional stability and ability to comply with post-surgical limitations. A [REDACTED] Medical Director may require an assessment independent of the surgical program.

Respondent Exhibit C, page 3

As testified by the MHP's witness, the MHP denied the prior authorization request for bariatric surgery pursuant to the above policies and guidelines. Specifically, the MHP's witness testified that, while Appellant has been diagnosed with obesity, the submitted psychiatric evaluation failed to establish his emotional stability and ability to comply with post-surgical limitations as required.

Appellant bears the burden of proving by a preponderance of the evidence that the MHP erred in denying his request. Moreover, this Administrative Law Judge is limited to reviewing the MHP's decision in light of the information it had at the time it made that decision.

In this case, given the information available at the time the MHP made the disputed decision, the undersigned Administrative Law Judge finds that Appellant has failed to meet his burden of proof and the decision to deny the prior authorization request must be affirmed. The psychiatric evaluation submitted along with the request merely stated that Appellant's individual disposition needed to be reviewed by the entire bariatric team and it did not make any conclusions regarding the appropriateness of the surgery.

Appellant does not dispute what the submitted psychiatric evaluation found, but he did testify that, subsequent to the denial, the bariatric team found that he was a good candidate for the surgery. However, as discussed above, the undersigned Administrative Law Judge is limited to reviewing the MHP's decision in light of the information it had at the time it made that decision and, consequently, any subsequent determinations are immaterial.

To the extent Appellant has additional or updated information regarding the appropriateness of bariatric surgery, he is free to resubmit the request for bariatric surgery to the MHP, along all the relevant documents and information. However, with respect to the decision at issue in this case, the MHP's actions must be affirmed given the available information.

[REDACTED]
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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 bariatric surgery.

IT IS THEREFORE ORDERED that:

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

Steven Kibit

Steven Kibit
Administrative Law Judge
For Nick Lyon, Director
Michigan Department of Community Health

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

SK/db

cc: [REDACTED]

***** 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.