

**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. 14-007286 MHP

Case No. ██████████

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37, and upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. Appellant appeared and testified. Appellant was represented by ██████████.

██████████, Senior Staff Attorney, represented the Medicaid Health Plan, ██████████ (MHP). ██████████, MD, Medical Director, testified as a witness on behalf of the MHP.

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. At all relevant time Appellant is a ██████ year old male beneficiary of the Medicaid program. Appellant is a recipient of SSI.
2. Appellant is 5 foot 7, with a BMI over 50. Appellant is morbidly obese.
3. On or about early ██████████, the MHP received a request on behalf of Appellant for bariatric surgery. Respondent's Exhibit A, pages 30- 74 containing 5 medical statements from Appellant's physicians submitted as documentation, dated between ██████████ and ██████████ documenting Appellant's need for bariatric surgery. (Exhibit A.30-70)
4. Medical documentation states that Appellant has severe OSA, diabetes type II, hypertension, and a "multitude of other problems." (Exhibit A.40)

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5. Appellant has a CPAP machine that he has not been compliant with. (Exhibit A.40)
6. In ██████████ Appellant was hospitalized in the ICU with acute on chronic respiratory failure secondary to obesity hypoventilation syndrome, with morbid obesity with BMI of 51. (Exhibit A.30)
7. A ██████████ Muskegon Family Care letter stating that Appellant “absolutely requires bariatric surgery” states: “[Appellant] has been involved in an exercise and diet program since ██████████.” (Exhibit A.38)
8. After a review by the MHP of Appellant’s medical documents and Appellant’s general medical history, on ██████████ MHP issued a Notification of Denied Service for the bariatric surgery evaluation. That denial denies Appellant’s request, in part, on the grounds that Appellant did not successfully complete MHP’s weight loss program requirements requiring successful completion of 2-12 week sessions of Weight Watchers, with a total loss of at least 5% of Appellant’s beginning body weight for each session, and, a showing of a nutrition program following by showing an ability to maintain the weight loss for the following six months. (Exhibit A.46)
9. Pursuant to Appellant’s second internal review, on ██████████ MHP once again denied Appellant on the grounds that Appellant has not submitted evidence of having participated in a weight loss program for a minimum of one year with successful % loss, and maintenance. (Exhibit A.91)
10. Pursuant to a third internal review, on ██████████ MHP once again denied Appellant on the grounds that the physician notes submitted do not show that Appellant has been evaluated by a dietician and a bariatric surgeon to show willingness to make the necessary lifestyle changes (Exhibit A.110)
11. On ██████████, the Michigan Administrative Hearing System (MAHS) received a request for hearing regarding the denial filed by Appellant.

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.

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The Respondent is in one of those Medicaid Health Plans and, regarding such plans, the Michigan Medicaid Provider Manual (MPM) states:

SECTION 1 – GENERAL INFORMATION

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

1.1 SERVICES COVERED BY MEDICAID HEALTH PLANS (MHPs)

* * *

- Medically necessary weight reduction services

[MPM, Michigan Health Plan (MHPs) Chapter, October 1, 2012 version, pages 1-2 (emphasis added.)]

Here, the MHP has properly developed utilization guidelines for weight loss surgeries in its Policy and Procedure Manual. Those guidelines state in part:

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Policy:

Surgery for morbid obesity is reserved for members who have demonstrated weight loss by traditional weight loss methods, exercise programs and lifestyle modifications when such methods have failed to yield sufficient weight loss in members who are at greater risk of complications due to their obesity. Bariatric surgery is not considered a first-line treatment. Even the mostly severely obese patients i.e. BMI > 50 can be helped through a program of reduced-calorie diet and exercise therapy. ...

Procedure:

Members may receive surgical intervention for obesity when all the following criteria are met:

Administrative:

1. Prior authorization by the Medical Director following completion of:
 - a. Requires referral by primary care physician to a multidisciplinary team...treatment at a facility utilizing a multidisciplinary approach, involving a physician with a special interest in obesity, a dietician, a psychologist or psychiatrist interest in behavior modification and eating disorders, and a surgeon with...
 - b. Compliance with all medical care...
 - c. Compliance with all medication regimes.

...Clinical:

- ...2. Documented continued consistent compliance with MHP established weight loss regimen including diet, exercise, and behavioral modification for a minimum of one year....
 - a. First six months are to be through MHP structured weight loss program...
 - b. With successful completion of the MHP six month weight loss program, the next six

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months ...will be through a supervised multi-disciplinary American Board of Bariatric Surgery Center of Excellence Medical Weight Loss program.... (Exhibit A.131-132)

There is no evidence in this case that the MHP's policy and procedure in out of compliance with federal and state law requirements.

In this case, it is undisputed that Appellant has not successfully participated in a physician-supervised weight loss program for a least one year. Accordingly, he fails to meet the criteria for the requested surgery and the denial must be affirmed. On this criteria alone, the MHP properly denied Appellant.

However, as noted above, the MHP also pointed out that Appellant did not comply with all medical care/regime (i.e. non-compliance with the CPAC machine), and with a nutritional team and program requirements with a multidisciplinary team.

[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 the Appellant's request for bariatric surgery.

IT IS THEREFORE ORDERED that:

The Medicaid Health Plan's decision is AFFIRMED.

ls

Janice Spodarek
Administrative Law Judge
for Nick Lyons, Director
Michigan Department of Community Health

cc:

[REDACTED]

JS [REDACTED]

Date Signed:

[REDACTED]

Date Mailed:

[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.