

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

IN THE MATTER OF:

Docket No. 14-015677 MHP

██████████  
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.*, following Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. Appellant appeared and testified. ██████████ appeared and testified on Appellant's behalf. ██████████, Inquiry Dispute Resolution Coordinator and ██████████ Medical Director for ██████████ appeared and testified on behalf of respondent.

**ISSUE**

Did M██████████ (██████████) properly deny Appellant's request for prior authorization Laparoscopic sleeve gastrectomy?

**FINDINGS OF FACT**

1. ██████████ is a Medicaid Health Plan (MHP) contracted with the State of Michigan Comprehensive Health Care Program.
2. Appellant was an enrolled member of ██████████ at the time of the request for services and continues to be enrolled.
3. Appellant filed a request for prior authorization for laparoscopic sleeve gastrectomy based upon the fact that she is morbid obesity and a BMI of ██████████ as well as chronic kidney disease - stage III, (Exhibit 4).
4. Appellant's physician provided documentation that Appellant is a candidate for surgical intervention because it is a viable treatment for the control and management of morbid obesity is medically necessary for patients at least ██████████ pounds from the ideal weight, (Exhibit 5).
5. On ██████████ denied Appellant's request for laparoscopic sleeve gastrectomy stating that surgery requires documentation showing the member has successful participation in a physician supervised weight loss program that included weight loss diet,

exercise and behavior changes for at least one year and done with the last ██████ years. Successful participation is determined at a minimum by regular attendance, at least monthly, and demonstration, showing consistent weight loss. Appellant had not completed the full year in a physician supervised weight loss program.

6. On ████████████████████, the Michigan Administrative Hearing System for the Department of Community Health received a request for hearing to contest the negative action.

### **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 in one of those Medicaid Health Plans and, regarding such plans, the Michigan Medicaid Provider Manual 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.)

The MHP guidelines provides that surgery for morbid obesity is an alternative to traditional weight loss methods with such methods have failed to yield sufficient weight loss in members who are at great risk of complications due to their obesity. Members may receive surgical intervention when all of the following criteria are met:

- 1 18 years of age or older;
- 2 BMI more than 35 and
- 3 two associated life-threatening comorbidities, which include but are not limited to:
  - poorly controlled diabetes mellitus despite optimal medical management,
  - symptomatic sleep apnea not controlled by C-pap.
  - severe cardiopulmonary condition,
  - hypertension inadequately controlled with optimal conventional treatment
  - uncontrolled hyperlipidemia not amenable to conventional treatment
- 4 Member's BMI is over 40 with or without the condition.
- 5 Physician documented successful participation in a physician supervised weight loss program involving a weight loss diet, exercise and behavior modification for a minimum of one year, performed within the last two years. Successful participation in determining at a minimum documented regular, at least monthly, and demonstration of consistent weight loss. The weight loss program must be medically supervised and provided my plan provider. A physician's summary letter will not be considered sufficient documentation. The documentation must include medical records last clinical notes of the physician's contemporaneous assessment of the members progress throughout the course of the weight loss program.

██████████ *Utilization Guideline 43770, 43846 for  
Bariatric Surgery. (Exhibit 42)*

In the instant case, MHP Medical Director, ██████████ testified that Appellant needs a modicum of weight loss and proof of monthly visits to her doctor to establish eligibility for the requested surgery. The information sent to ██████████ indicates that the physician supervised weight loss program documentation in the file shows supervised weight loss program of ██████████ visits over a ██████████-month period from ██████████ to ██████████ which does not meet criteria guidelines. Appellant may resubmit additional medical information when she completes at least one year of physician documented successful participation in a physician supervised weight loss program.

Appellant testified on the record that she has only one kidney and that she has stage III kidney disease. She has limitations in her ability to perform sustained exercise. She can exercise for approximately ██████████ to ██████████ minutes at a time. ██████████ testified that Appellant had been cleared by the nephrologist for surgical intervention in that she had regularly attended scheduled medical appointments.

The [REDACTED] Utilization Guidelines for bariatric surgery requires documentation, doctors notes, showing that the member has successful participation in a physician supervised weight loss program that included weight loss diet, exercise and behavior changes for at least [REDACTED] year and done within the last [REDACTED] years. Successful participation is determined at a minimum by regular attendance, at least monthly, and demonstration of consistent weight loss. Information sent to [REDACTED] indicates that supervised weight loss no stated [REDACTED], Appellant weighed [REDACTED] pounds; on [REDACTED] Appellant weighed [REDACTED] 6 pounds; and on [REDACTED] Appellant weighed [REDACTED] pounds, therefore, not meeting criteria guidelines, Exhibit 45.

In the instant case, Appellant has not established by the necessary competent, material and substantial evidence on the record that she has attended at least [REDACTED] months of physician documented successful participation in a physician supervised weight loss program. The conditions required for coverage were not met based upon medical information submitted with the Prior Authorization request. The MHP does not have discretion to approve Appellant's request when Appellant has not met the criteria for approval. The decision to deny the request for prior authorization for bariatric surgery must be upheld under the circumstances.

**DECISION AND ORDER**

Based on the above findings of fact and conclusions of law, the Administrative Law Judge finds that [REDACTED] properly deny Appellant's request for laparoscopic sleeve gastrectomy surgery under the circumstances. Appellant may resubmit additional medical information when she completes at least one year of physician documented successful participation in a physician supervised weight loss program.

IT IS HEREBY ORDERED:

Accordingly, [REDACTED] decision to deny claimant's request for prior authorization for laparoscopic sleeve gastrectomy surgery is AFFIRMED.

\_\_\_\_\_  
*/S/*  
Landis Y. Lain  
Administrative Law Judge  
for Nick Lyon, Director  
Michigan Department of Community Health

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

[REDACTED]  
Docket No. 14-015677 MHP  
Decision and Order

LYL/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 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.