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. 15-000277-MHP
Case No. [redacted]

Appellant.
_____/

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37, and upon a request for a hearing filed on behalf of the minor Appellant.

After due notice, a telephone conference hearing was held on [redacted]. [redacted], Appellant's mother, appeared on Appellant's behalf.

[redacted], Manager Medicaid Products, appeared on behalf of the Medicaid Health Plan, [redacted] ([redacted] or MPH). [redacted], Senior Prior Authorization Nurse, LPN, appeared as a witness.

ISSUE

Did [redacted] properly deny Appellant's request for bilateral otoplasty?

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 [redacted] year old female Medicaid beneficiary, born [redacted]. Appellant is diagnosed with prominent ear deformity, 744.29. (Exhibit A.8).

2. On [redacted], [redacted] received a prior authorization (PA) request from Dr. [redacted] from the [redacted] for bilateral otoplasty surgery. (Exhibit A.6).

3. Included with Appellant's physician's PA, a social work assessment was included from [redacted] that states in part that Appellant has not had any issues with being bullied by her peers. (Exhibit A.8).

4. On [redacted], [redacted] issued an initial denial of the Appellant's prior authorization request on the grounds that the evidence submitted by Appellant's physician did not show that Appellant met the requirements for this surgery under the Medicaid Provider Manual (MPM) Section 13.3, and under the MHP's Certificate of Coverage (COC), Section 6. (Exhibit A.19-20).

5. On [redacted], the Michigan Administrative Hearing System (MAHS) received a request for hearing filed on behalf of Appellant. (Exhibit A.4).

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.)
>
> 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. [*Medicaid Provider Manual*, *Medicaid Health Plan (MHPs)*, October 1, 2013, p. 1 (emphasis added)].

Under the Practitioner Chapter of the MPM, Cosmetic Surgery requirements state as follows:

> 12.3 Cosmetic Surgery
>
> Medicaid only covers cosmetic surgery if PA has been obtained. The physician may request PA if any of the following exist:
>
> - The condition interferes with employment.
> - It causes significant disability or psychological trauma (as documented by psychiatric evaluation).
> - It is a component of a program of reconstruction surgery for congenital deformity or trauma.
> - It contributes to a major health problem.

In addition, Section 6 from the Respondent's COC, General Exclusions from Coverage lists 69300-otoplasty, protruding ear, with or without size reduction. (Exhibit A.33). Under certain instances, the COC Section 6-Schedule of Covered Services states that psychological reasons do not represent a medical or surgical necessity unless the beneficiary is undergoing psychotherapy for issues solely related to the illness or injury for which cosmetic surgery is requested. (Exhibit A.45).

Appellant bears the burden of proving by a preponderance of the evidence that [redacted] erred in denying his request for bilateral otoplasty based on the information submitted. Here, Appellant has failed to meet that burden of proof.

As noted, this type of surgery is generally considered cosmetic. Cosmetic surgery is not covered. However, under certain situations, it may be. As noted above, none of the criteria required by the MPM apply. Moreover, there was no showing of psychological issues as evidenced by Exhibit A.8. Under these facts, eligibility is not shown.

Appellant's mother understands that she may re-apply, and expressed her understanding as to what evidence might be sufficient to meet the statutory and policy requirements.

The MPH, and likewise the undersigned administrative law judge are bound by the policies set forth in the Medicaid Provider Manual. The preponderance of the evidence in this case shows that the evidence is not sufficient to meet the requirements. Under these facts, the octoplasty is not a covered benefit. Accordingly, the Appellant has failed to demonstrate that [redacted] erred by denying the bilateral octoplasty.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that [redacted] properly denied Appellant's request for bilateral octoplasty.

IT IS THEREFORE ORDERED that:

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

Janice Spodarek
Administrative Law Judge
for Nick Lyon, 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.