

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**

P.O. Box 30763, Lansing, MI 48909
(517) 373-0722; Fax: (517) 373-4147

IN THE MATTER OF:

MAHS Docket No. 15-018655 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.*, and upon Appellant's request for hearing.

After due notice, a telephone hearing was held on ██████████ Appellant's husband, appeared and testified on Appellant's behalf. Appellant also testified on her own behalf. ██████████, Assistant General Counsel, appeared on behalf of ██████████ the Respondent Medicaid Health Plan (MHP). ██████████, Medical Director, testified as a witness for the MHP.

Following the completion of the hearing, the record was left open for own week so that Respondent could submit additional policy to Appellant and to the undersigned Administrative Law Judge.

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. (Exhibit A, page 11).
2. On or about ██████████, the MHP received a prior authorization request submitted on Appellant's behalf and asking for bariatric surgery. (Exhibit A, pages 7-16).
3. The request included a prescription indicating that Appellant has been diagnosed with morbid obesity, back pain, leg pain, and sleep apnea; documentation regarding Appellant signing up for a ██████████

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program in ██████ ████ ██████; and documentation regarding Appellant's participation in a ████████████████████ program between ████████████████████ and ████████████████████, during which she gained a pound. (Exhibit A, pages 7-16).

4. On ████████████████████, the MHP sent Appellant written notice that the prior authorization request was denied. (Exhibit A, pages 17-27).
5. Specifically, the notice of denial sent to Appellant provided:

The reason for this action is the clinical information submitted does not support the ████████████████████ ████████████████████ Medical Policy for Bariatric Surgery.

Bariatric Surgery (Weight Loss Surgery)
Evaluation

We received a request for you to have a weight loss surgery evaluation. We require that you complete an approved weight management program. The program is to help you get support to make lifestyle changes that result in weight loss, healthy eating habits, and regular exercise. The notes sent do not show that you have completed a six month approved program. There is no proof that these lifestyle changes have taken place. Therefore, the request is denied. Please talk to your doctor about this.

Exhibit A, page 18

6. On ████████████████████, Appellant filed a local appeal with respect to the denial, along with some additional documentation in support. (Exhibit A, pages 28-40).
7. The supporting documentation included medical records addressing Appellant's knee problems; leg problems; and sleep apnea. (Exhibit A, pages 29-40).
8. On ████████████████████, the MHP issued a letter upholding its earlier decision. (Exhibit A, pages 49-50).

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9. Specifically, that letter provided:

Appeal Resolution: Per ██████████ Medical Policy for Bariatric Surgery, you must successfully complete a █ month weight watchers program to be eligible for a bariatric surgery evaluation. The notes provided from your doctor do not show that you lost your goal weight during the ██████████ program, therefore, this request remains denied. Please follow up with █ ██████ for other care options.

Exhibit A, page 49

10. On ██████████, the Michigan Administrative Hearing System (MAHS) received the request for hearing filed in this matter. (Exhibit A, pages 1-2).

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 statutes, 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

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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.

*MPM, July 1, 2015 version
Medicaid Health Plan Chapter, page
(Emphasis added)*

Pursuant to the above policy and its contract with the Department, the MHP has developed prior authorization requirements and utilization management and review criteria. With respect to bariatric surgery, the MHP's policies specifically provide that members may receive the surgery when all the criteria for it are met, including the requirement of a "Documented continued consistent compliance with ██████████ ██████████) established weight loss regimen including diet, exercise, and behavioral modification for a minimum of ██████ year. Weight loss efforts prior to eligibility with MHP are not taken into consideration." (Exhibit A, page 60). The policy also provides in part:

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

Exhibit A, page 59

Here, the notice of denial and the MHP's witness' testimony both provide that Appellant's request for bariatric surgery was denied pursuant to the above policies. Specifically, they noted that, while Appellant participated in the weight loss program, she gained a pound during that time and therefore failed to demonstrate the required

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consistent compliance with the MHP weight loss regimen for a minimum of one year. The MHP's witness also testified as to the reasoning behind the policy and stated that the weight loss from the surgery is less likely to be maintained long-term without a demonstrated ability to lose some weight through the traditional methods of diet, exercise, and behavioral modification.

In response, Appellant's representative testified that Appellant could not complete the weight loss program due to language barriers, as Appellant does not speak ██████████ and an inability to exercise, due to surgery on her foot. He also testified that Appellant is having health complications from her weight, including sleep issues and back pain, and that she needs the surgery. He further testified that he is aware of people who successfully underwent the surgery without any prior weight loss and that maintained the weight loss afterward.

Appellant bears the burden of proving by a preponderance of the evidence that the MHP erred in denying her prior authorization request.

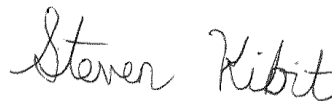
Given the record in this case, the undersigned Administrative Law Judge finds that Appellant has failed to meet that burden of proof and that the MHP's decision must therefore be affirmed. The MHP is permitted by Department policy and its contract to develop review criteria; it has done so; and, pursuant to the applicable review criteria, Appellant clearly does not meet the requirements for bariatric surgery as she has not documented continued consistent compliance with the established weight loss regimen including diet, exercise, and behavioral modification, for a minimum of one year.

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 prior authorization request for bariatric surgery.

IT IS THEREFORE ORDERED that:

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



Steven Kibit
Administrative Law Judge
for Director, Nick Lyon
Michigan Department of Health and Human Services

Date Signed: ██████████
Date Mailed: ██████████

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SK/db

cc:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

***** NOTICE *****

The Michigan Administrative Hearing System 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.