

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

P.O. Box 30763, Lansing, MI 48909
(800) 648-3397; Fax: (517) 373-4147

IN THE MATTER OF:

██████████,

Appellant

Docket No. 15-020961 MHP
Case No. ██████████

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ) pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, following the Appellant's request for a hearing.

After due notice, a hearing was held ██████████. The Appellant appeared on her own behalf and offered testimony. ██████████, Appeals Coordinator, appeared and testified on behalf of ██████████, the Medicaid Health Plan (MHP).

ISSUE

Did the MHP properly deny Appellant's request for bariatric surgery?

FINDINGS OF FACT

Based upon the competent, material, and substantial evidence presented, I find, as material fact:

1. The Appellant is a ██████-year-old female Medicaid beneficiary who is currently enrolled in the MHP. (Exhibit A, pp. 1, 4; Testimony.)
2. On ██████████, Dr. ██████████, M.D., submitted to the MHP a prior authorization request for a bariatric procedure. The prior authorization request included numerous medical records. (Exhibit A, pp. 1, 4-76; Testimony.)
3. The prior authorization request included food logs. The food logs do not reference on which dates the food was consumed outside of day numbers. The food logs contain entries of pizza, cheeseburgers, bacon and cheese sandwiches and nachos. (Exhibit A, pp. 9-31.)
4. The prior authorization request included a hand written weight log. The log indicated a nearly 7 pound weight gain from ██████████ through ██████████. (Exhibit A, p. 32.)

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5. On [REDACTED], the Appellant met with [REDACTED], R.D.N. for medical nutrition therapy. [REDACTED] told the Appellant to increase physical activity; commit to food logs and eliminate carbonated beverages, caffeine, alcohol and high sugar food and beverages. (Exhibit A, p. 33.)
6. On [REDACTED], the Appellant met with [REDACTED]. The Appellant did not bring any food logs to the appointment and told [REDACTED] that she had not been keeping food logs as requested. The Appellant told [REDACTED] that she continued to drink sugary beverages including carbonated beverages regularly. [REDACTED] provided the Appellant protein powder handouts and discussed the inclusion of these powders in her diet. (Exhibit A, p. 38.)
7. On [REDACTED], the Appellant met with [REDACTED]. The Appellant presented with food logs that did not indicate meals or meal times which limited the accuracy of the assessment. The Appellant indicated she continued to drink "pop" and had not gotten a protein supplement. At the time of the appointment, [REDACTED] opined the Appellant's compliance was guarded. (Exhibit A, p. 69.)
8. On [REDACTED], the MHP issued to the Appellant and Dr. [REDACTED] notification indicating the [REDACTED] request was being denied as the request did not show reasonable compliance with medical recommendations including following a low-fat diet and using protein supplements in addition to the provided weights not showing compliance with diet modifications. (Exhibit A, pp. 92, 93; Testimony.)
9. On [REDACTED], the Michigan Administrative Hearings System (MAHS) received from the Appellant a Request for Hearing. (Exhibit A, p. 94.)

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 MHPs.

The Respondent is one of those MHPs.

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The covered services that the Contractor has available for enrollees must include, at a minimum, the covered services listed below. The Contractor may limit services to those which are medically necessary and appropriate, and which conform to professionally accepted standards of care. The Contractor must operate consistent with all applicable Medicaid provider manuals and publications for coverages and limitations. If new services are added to the Michigan Medicaid Program, or if services are expanded, eliminated, or otherwise changed, the Contractor must implement the changes consistent with State direction in accordance with the provisions of Contract Section 2.024.

Although the Contractor must provide the full range of covered services listed below they may choose to provide services over and above those specified. The covered services provided to enrollees under this Contract include, but are not limited to, the following:

- Ambulance and other emergency medical transportation
- Blood lead testing in accordance with Medicaid Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) policy
- Certified nurse midwife services
- Certified pediatric and family nurse practitioner services
- Chiropractic services
- Diagnostic lab, x-ray and other imaging services
- Durable medical equipment (DME) and supplies
- Emergency services
- End Stage Renal Disease services
- Family planning services (e.g., examination, sterilization procedures, limited infertility screening, and diagnosis)
- Health education
- Hearing and speech services
- Hearing aids
- Home Health services
- Hospice services (if requested by the enrollee)
- Immunizations
- Inpatient and outpatient hospital services

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- Intermittent or short-term restorative or rehabilitative services (in a nursing facility), up to 45 days
- Restorative or rehabilitative services (in a place of service other than a nursing facility)
- **Medically necessary weight reduction services**
- Mental health care – maximum of 20 outpatient visits per calendar year
- Out-of-state services authorized by the Contractor
- Outreach for included services, especially pregnancy-related and Well child care
- Parenting and birthing classes
- Pharmacy services
- Podiatry services
- Practitioners' services (such as those provided by physicians, optometrists and dentists enrolled as a Medicaid Provider Type 10)
- Prosthetics and orthotics
- Tobacco cessation treatment including pharmaceutical and behavioral support
- Therapies (speech, language, physical, occupational) excluding services provided to persons with development disabilities which are billed through Community Mental Health Services Program (CMHSP) providers or Intermediate School Districts.
- Transplant services
- Transportation for medically necessary covered services
- Treatment for sexually transmitted disease (STD)

- Vision services
- Well child/EPSTD for persons under age 21

Article 1.020 Scope of [Services],
at §1.022 E (1) contract, 2014, p. 22.

- (1) The major components of the Contractor's utilization management (UM) program must encompass, at a minimum, the following:
 - (a) Written policies with review decision criteria and procedures that conform to managed health care industry standards and processes.
 - (b) A formal utilization review committee directed by the Contractor's medical director to oversee the utilization review process.

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- (c) Sufficient resources to regularly review the effectiveness of the utilization review process and to make changes to the process as needed.
- (d) An annual review and reporting of utilization review activities and outcomes/interventions from the review.
- (e) The UM activities of the Contractor must be integrated with the Contractor's QAPI program.

(2) Prior Approval Policy and Procedure

The Contractor must establish and use a written prior approval policy and procedure for UM purposes. The Contractor may not use such policies and procedures to avoid providing medically necessary services within the coverages established under the Contract. The policy must ensure that the review criteria for authorization decisions are applied consistently and require that the reviewer consult with the requesting provider when appropriate. The policy must also require that UM decisions be made by a health care professional who has appropriate clinical expertise regarding the service under review.

....

Contract, *Supra*, pp. 59, 60.

As stated in the Department-MHP contract language above, a MHP, must operate consistent with all applicable Medicaid Provider Manuals and publications for coverages and limitations. The pertinent section of the Michigan Medicaid Provider Manual (MPM) states:

3.21 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

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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.

*Department of Community Health,
Medicaid Provider Manual, Practitioner
October 1, 2015, p. 24.*

Apollo Managed Care criteria for Bariatric Surgery for morbid Obesity requires that "Member's participation in a physician-supervised nutrition and exercise program must be documented in the medical record by an attending physician who supervised the member's participation. The nutrition and exercise program may be administered as part of the surgical preparative regimen, and participation in the nutrition and exercise program may be supervised by the surgeon who will perform the surgery or by some other physician. Records must document compliance with the program; the member must not have a net gain in weight during the program."

Exhibit A, p. 82.

The guidelines relied upon the MHP contain certain criteria for authorizing surgical intervention for obesity and are consistent with the Medicaid standard of coverage to only prior authorize medically necessary treatment of obesity when done for the purpose of controlling life-endangering complications, do not effectively avoid providing medically necessary services, and are allowable under the DCH-MHP contract provisions.

Appellant bears the burden of proving by a preponderance of the evidence that the MHP erred in denying her request for bariatric surgery.

Here, based on the evidence presented in this case, the MHP properly denied Appellant's request for bariatric surgery based on MPM and the MHP Guidelines. The records provided to the MHP do not indicate the Appellant was compliant with the weight loss program she was enrolled in. The Appellant over the course of the program did not keep accurate food logs; continued to consume carbonated sugar beverages; failed to add protein powder to her diet and gained weight.

The Appellant argued that she was compliant with the weight loss program. The Appellant's medical records indicate otherwise.

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The MHP's bariatric surgery prior approval process is consistent with Medicaid policy and allowable under the DCH-MHP contract provisions. Here, the MHP demonstrated the Appellant did not meet criteria for approval of bariatric surgery based on the information available at the time of the request and its decision must be affirmed.

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 MHP's decision is **AFFIRMED**.

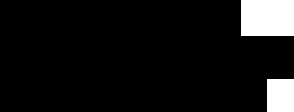


Corey Arendt
Administrative Law Judge
for Director, Nick Lyon
Michigan Department of Health and Human Services

Date Mailed: January 29, 2016

Date Mailed: January 29, 2016

CAA 

cc: 

***** 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.