

**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:

██████████,

Appellant

_____ /

MAHS Docket No. 15-022140 MHP
Agency Case No. ██████████

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 appeared and testified on her own behalf. ██████████, Team Lead, Grievance and Appeal Department, appeared and testified on behalf of ██████████, the Respondent Medicaid Health Plan (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. Appellant is a █████ year-old Medicaid beneficiary, born ██████████ who is enrolled in the Respondent MHP. (Exhibit A, p 6; Testimony).
2. On or about ██████████ the MHP received a prior authorization request submitted on Appellant's behalf asking for bariatric surgery, specifically a laparoscopic revision of sleeve gastrectomy to Roux-en-y gastric bypass. (Exhibit A, pp 5-20; Testimony).
3. On ██████████ the MHP sent Appellant written notice that the prior authorization request was denied. (Exhibit A, pp 21-23; Testimony).
4. Specifically, the notice of denial sent to Appellant provided:

Information reviewed by us shows you had a previous vertical sleeve

gastrectomy on ██████████, and there is no documentation of acute complications. Therefore, ██████████ is unable to approve your request for a second bariatric surgery.

This decision is based on the medical director review of information submitted by your doctor and the ██████████ Medical Policy No. 91595-R2 Surgical Treatment of Obesity, which states: Coverage for Medicaid/Healthy Michigan Plan members is limited to one bariatric surgery per lifetime, unless Medically/Clinically Necessary, a second bariatric surgery is not covered, even if the initial bariatric surgery occurred prior to Coverage under this plan.

(Exhibit A, p 22)

5. On ██████████ Appellant's physician submitted a second prior authorization request for bariatric surgery, specifically a laparoscopic revision of sleeve gastrectomy to Roux-en-y gastric bypass. (Exhibit A, pp 24-43; Testimony).
6. On ██████████, following a review of the second prior authorization request, the MHP sent a second denial notice which reiterated the same reasons for the denial cited in the first notice. (Exhibit A, pp 45-46; Testimony).
7. On ██████████ the Michigan Administrative Hearing System (MAHS) received the request for hearing filed in this matter. (Exhibit 1).
8. On ██████████ a peer to peer review was held between Appellant's physician and the MHP's Medical Director. Following the review, the denial was upheld. (Exhibit A, p 60; Testimony).

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.

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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 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 Chapter
October 1, 2015, p 1
(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 "Coverage for Medicaid/Health Michigan Plan members is limited to one bariatric surgery per lifetime, unless Medically/Clinically Necessary, a second bariatric surgery is

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not covered, even if the initial bariatric surgery occurred prior to Coverage under this plan.” (Exhibit A, p 51). The policy also provides in part:

In members whose primary bariatric surgery (PBS) was Roux-en-Y gastric bypass (RYGB), vertical sleeve gastrectomy (VSG), or biliopancreatic diversion with duodenal switch (BPD-DS) or without duodenal switch (BPD), Corrective RBS is considered medically necessary to correct acute or chronic mechanical and or anatomic complications including fistula, obstruction, stricture, marginal ulcer, if the above results in abdominal pain, inability to eat or drink or causes persistent vomiting of prescribed meals. (Exhibit A, p 52)

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. The MHP’s witness also pointed out that the MHP’s Medical Director had a peer to peer discussion with Appellant’s physician and still determined that Appellant’s complaints did not meet the medical necessity criteria outlined above.

Appellant testified that she has heartburn with bile rising up into her esophagus so bad that she cannot sleep at night. Appellant indicated that she does vomit, although not every day. Appellant indicated that she is afraid she will get esophageal cancer given all the bile rising up from her stomach. Appellant testified that she eats as directed and takes all of her prescribed medications, but the symptoms persist. Appellant also indicated that she had a hernia repaired in the hopes it would lessen her condition, but it did not. Appellant testified that she has to sit up at night in bed and has had situations where she has choked on the bile rising from her stomach. Appellant testified that she is going to see a gastroenterologist to see if there is anything else that might be able to be done.

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 had a previous bariatric surgery and her current condition, while serious, does not amount to “acute or chronic mechanical and or anatomic complications including fistula, obstruction, stricture, marginal ulcer, if the above results in abdominal pain, inability to eat or drink or causes persistent vomiting of prescribed meals.” As such, the MHP’s decision must be upheld.

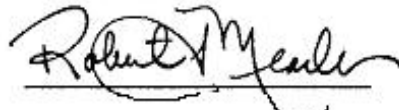
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DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the MHP properly denied the prior authorization request for bariatric surgery.

IT IS THEREFORE ORDERED that:

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



Robert J. Meade
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Health and
Human Services

Date Mailed: [REDACTED]

RJM/cg

cc: [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.