RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

MIKE ZIMMER
DIRECTOR

[redacted]

Date Mailed: March 17, 2016
MAHS Docket No.: 15-020817
Agency No.: [redacted]
Petitioner: [redacted]

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

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 the Petitioner's request for a hearing.

After due notice, a telephone hearing was held on [redacted]. Petitioner is a minor child and did not appear to testify at the hearing. Petitioner's mother, [redacted] appeared and testified on Petitioner's behalf. [redacted], Assistant General Counsel represented Respondent [redacted] (MHP or Respondent) at the hearing. [redacted], Medical Director, appeared and testified on Respondent's behalf.

Respondent's Exhibit A pages 1-92 were admitted as evidence.

ISSUE

Did the MHP properly deny the Petitioner's prior authorization request for scar revision surgery?

FINDINGS OF FACT

Based on the competent, material, and substantial evidence presented, the Administrative Law Judge finds as material fact:

1. [redacted] ("MHP") is contracted with the state of Michigan to arrange for the delivery of health services to Medicaid recipients.

2. At all times relevant to this case, Petitioner was enrolled in the MHP.

3. Petitioner is minor child, date of birth [redacted].

4. On [redacted], the MHP received a Prior Authorization request from Petitioner's physician, requesting approval for outpatient surgery on

[redacted]. He has scars which cause him discomfort (tender to touch) and itching. We have offered him Fractional CO2 laser to chest Cosmetic Surgery. (Respondent's Exhibit A page 6)

5. On [redacted], the MHP denied the request and sent Petitioner Notification of Denied Service stating: It has been determined that Scar Revision Surgery shall not be authorized because the scar does not cause significant disability, major health problems, and was not caused by surgery for cancer. That means it is cosmetic surgery. We can only pay for surgery that improves your health. (Respondent's Exhibit A page 21).

6. On [redacted], Petitioner appealed the denial.

7. On [redacted], the MHP upheld the denial of the service, stating that the request does not meet medical necessity criteria as per [redacted] Medical Policy for Cosmetic surgery.

8. On [redacted], Petitioner filed a Request for Hearing with the Michigan Administrative Hearing System (MAHS) to contest the negative action.

9. On [redacted], the MHP sent Petitioner Notice that the request for services had been denied because Petitioner did not meet [redacted] Medical Policy for Cosmetic Surgery in that there was no documentation to support that non-operative management with steroid injections has failed. (Respondent's Exhibit A page 3)

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.

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
- 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/EPSDT for persons under age 21 [Article 1.020 Scope of [Services], at §1.022 E (1) contract, 2010, 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.
(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,* p. 49].

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."

Under the (MDHHS)-MHP contract provisions, an MHP may devise their own criterion for coverage of medically necessary services, as long as those criterion do not effectively avoid providing medically necessary services.

[redacted] Policy and Procedure Manual F.11 states in pertinent part:

Cosmetic surgery is performed to reshape normal structures of the body in order to improve the patient's appearance and self-esteem. Therapies and procedures intended to change or restore appearance for cosmetic purposes are not a covered benefit. Coverage is not covered for elective cosmetic procedures regardless of the underlying causes of the condition and even if it is expected that the proposed cosmetic procedure may be psychologically beneficial to the member. Cosmetic surgery or expenses incurred in connection with such surgery are not covered under the Medicaid program, except when required for the prompt (i.e. as soon as medically feasible) repair of accidental injury or for the improvement of the functioning of a malformed body member. (Policy number F.11 page 1)

Scar revision will be considered on an individual basis when:

> The scar causes chronic symptoms which are refractory to non-operative measurements including injection therapies
>
> 1. Documentation of chronic pain requiring medication or limiting activities of daily living,
>
> 2. Documentation of ulcerated or inflamed scar despite medical management including photograph of scar,
>
> 3. Revision of disfiguring and extensive scars resulting from neoplastic surgery. (MHP Policy and Procedure Manual F.11 page 2)

Petitioner alleges that the scar hurts and is raised two to three inches. It feels like it is on fire and constantly itches. (Respondent's Exhibit A page 32)

In the instant case, Progress Notes from [redacted] indicate that Petitioner was evaluated for laser treatment and management of his scar. Peripherally, there is some hypopigmentation indicating the extent of the original burn injury. It does not affect him functionally. It does appear to be consistent with hypertrophic scarring versus a keloid. Occupational Therapy will see him and begin the process of scar management with compression. (Respondent's Exhibit A page 7)

MHP Appeal Resolution indicates in a [redacted] Notice letter that the service is denied because the notes from Petitioner's doctor do not show that he has tried non-operative management of this scarring such as steroid injections. There is no evidence showing this type of treatment will relieve the itching and pain Petitioner has been having. (Respondent's Exhibit A page 35)

The Medicaid Health Plan (MHP) does not have discretion to approve Petitioner's request for items when insufficient evidence in support of medical necessity has been provided. Petitioner's physician may resubmit a Prior Authorization request for surgery with the appropriate documentation and the MHP will be able to consider the request. The decision to deny the request for authorization 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 the MHP's denial of the Petitioner's request for scar revision surgery was proper under the circumstances.

IT IS THEREFORE ORDERED that:

The MHP's decision is **AFFIRMED**.

LL/[redacted]

Landis Lain
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30763
Lansing, Michigan 48909-8139

DHHS -Dept Contact

[redacted]

Community Health Rep

[redacted]

Petitioner

[redacted]