



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: [REDACTED]
MAHS Docket No.: 16-000190
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Robert Meade

DECISION AND ORDER

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

After due notice, a hearing was held on [REDACTED]. Petitioner appeared and testified on his own behalf. [REDACTED], Petitioner's spouse, and [REDACTED], [REDACTED], appeared as witnesses for Petitioner. [REDACTED], Inquiry Dispute Appeals Resolution Coordinator, [REDACTED], represented the Medicaid Health Plan (MHP). [REDACTED], [REDACTED], appeared as a witness for the MHP.

ISSUE

Did the MHP properly deny Petitioner's request for bariatric (weight loss) 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. On [REDACTED], the MHP received a request from Petitioner's medical providers seeking approval for laparoscopic gastric bypass surgery for Petitioner. (Exhibit A, pp 5-63; Testimony).
2. The MHP reviewed the submitted documents and Petitioner's general medical history. (Testimony)

3. The MHP determined that the request for gastric bypass surgery had to be denied because such surgery is only approved if there is documentation showing that the member had successful participation in a physician supervised weight loss program that included a weight loss diet, exercise and behavior changes for at least one year and done within the last two years. Successful participation is determined at a minimum by regular attendance (at least monthly) and demonstration of consistent weight loss. The information provided showed that Petitioner had not participating in a physician supervised weight loss program for at least one year and had not demonstrated consistent weight loss. (Exhibit A, p 1, 25-32, 64-66; Testimony)
4. On [REDACTED], the MHP sent Petitioner and his provider written notice that the request for bariatric (weight loss) surgery was denied because Petitioner had not shown that he had successfully participated in a physician-supervised weight loss program for a least one year within the last two years. (Exhibit A, pp 68-71; Testimony)
5. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received Petitioner's request for hearing.

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 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)*

Here, the MHP has properly developed utilization guidelines for weight loss surgeries and those guidelines include the following criteria:

4. Physician documented successful participation in a physician supervised weight loss program involving a weight loss diet, exercise, and behavioral modifications for a minimum of one (1) year, performed within the last two (2) years. Successful participation is determined at a minimum by documented regular attendance (at least monthly) and demonstration of consistent weight loss. The weight loss program must be medically supervised and provided by a plan provider. A physician's summary letter will not be considered sufficient documentation. The documentation must include medical records/clinical notes of the physician's contemporaneous assessment of the member's progress throughout the course of the weight loss program. [Exhibit A, p 64.]

The MHP's Medical Director testified that the evidence showed that Petitioner had transferred to [REDACTED] from [REDACTED] after [REDACTED] lost its Medicaid contract with the state of Michigan. The MHP's Medical Director indicated that [REDACTED] took over the [REDACTED] patients and offered a 90 day transition period during which [REDACTED] would approve requests for services based on [REDACTED] criteria. The MHP's Medical Director testified that the transition plan was approved by the state of Michigan and information regarding the plan was sent to all [REDACTED] participants and providers. The MHP's Medical Director indicated that the transition period ended on [REDACTED] and that Petitioner's prior authorization request was not received until [REDACTED], hence Petitioner's request was processed under [REDACTED] guidelines. The MHP's Medical Director testified that under [REDACTED] guidelines, Petitioner needed to demonstrate that he had been in a physician supervised weight loss program for at least one year and that he had shown consistent weight loss during that time. The MHP's Medical Director indicated that pursuant to the information submitted, Petitioner had only been in a physician supervised weight loss program for 8 months at the time of his prior authorization request and he did not show consistent weight loss during that period. The MHP's Medical Director suggested that if Petitioner has continued in a physician supervised weight loss program and shown consistent weight loss, he could now submit a new prior authorization request.

Petitioner's Bariatric Manager testified that she knew [REDACTED] was taking over [REDACTED] patients so she contacted [REDACTED] directly to check on the criteria for bariatric surgery. Petitioner's Bariatric Manager indicated that she was told on two separate occasions by [REDACTED] representatives that Petitioner would only be subject to the 6 month physician supervised weight loss program required by [REDACTED]. Petitioner's Bariatric Manager testified that it was only after Petitioner's prior authorization request had been submitted and denied that she was told about the 90 day transition period. Petitioner's Bariatric Manager indicated that Petitioner's physician has since taken Petitioner off of a sugar pill that was preventing him from losing weight and he has now lost over 50 pounds.

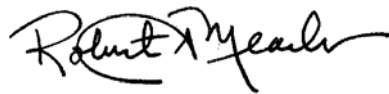
In this case, it is undisputed that at the time Petitioner submitted his prior authorization request he had not successfully participated in a physician-supervised weight loss program for at least one year within the last two years and had not shown consistent weight loss. While it is unfortunate that Petitioner's provider did not receive complete information with regard to the transition of [REDACTED] patients to [REDACTED], the undersigned has no authority to override Medicaid policy and [REDACTED] approved criteria for bariatric surgery. Accordingly, Petitioner failed to meet the criteria for the requested surgery and the denial 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 Petitioner's request for bariatric weight loss surgery.

IT IS, THEREFORE, ORDERED that:

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



RM/cg

Robert Meade
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]