



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]

Date Mailed: July 18, 2016  
MAHS Docket No.: 16-007020  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Landis 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.*, upon the Petitioner's request for a hearing.

After due notice, a hearing was held on July 13, 2016. Petitioner [REDACTED] appeared on behalf of the Petitioner; [REDACTED], Appeals Coordinator, represented [REDACTED], the Medicaid Health Plan (MHP or Respondent).

Respondent's Exhibit A pages 1-40 were admitted as evidence.

### **ISSUE**

Did the Medicaid Health Plan properly deny Petitioner'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. Petitioner is a Medicaid beneficiary.
2. On May 6, 2016, the MHP received a request from [REDACTED], M.D. asking for authorization for bariatric surgery for Petitioner.
3. On May 18, 2016, the MHP reviewed the request and a denial was issued based on the Apollo Managed Care Criteria and the MAHP Bariatric Surgery Guidelines for Coverage (Attachment B) The denial was sent to the member and the provider.

4. The denial notice to the member indicated that the provided documentation shows a consistent weight gain during medically supervised weight loss program. In addition, there was no food or exercise logs included with the documentation. This does not show compliance with the weight loss program including diet, exercise and behavioral modifications.
5. On June 2, 2016, the Michigan Administrative Hearing system received a Request for Hearing to contest the denial of Bariatric surgery.
6. On June 7, 2016 the MHP received the request for hearing.
7. On June 13, 2016 the MHP received the Notice of Hearing.

### **CONCLUSIONS OF LAW**

The Medical Assistance Program (MA) 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 Medicaid Health Plans.

The Respondent is one of those Medicaid Health Plans.

The covered services that the Contractor has available for enrollees must include, at a minimum, the covered services listed below (List omitted by Administrative Law Judge). The Contractor may limit services to those which are medically necessary and appropriate, and which conform to professionally accepted standards of care. Contractors 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 1-Z.

*Article II-G, Scope of Comprehensive Benefit Package.  
MDHHS contract (Contract) with the Medicaid Health Plans,  
September 30, 2004.*

The major components of the Contractor's utilization management plan must encompass, at a minimum, the following:

- Written policies with review decision criteria and procedures that conform to managed health care industry standards and processes.
- A formal utilization review committee directed by the Contractor's medical director to oversee the utilization review process.
- Sufficient resources to regularly review the effectiveness of the utilization review process and to make changes to the process as needed.
- An annual review and reporting of utilization review activities and outcomes/interventions from the review.

The Contractor must establish and use a written prior approval policy and procedure for utilization management 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 utilization management decisions be made by a health care professional who has appropriate clinical expertise regarding the service under review.

*Article II-P, Utilization Management, Contract,  
September 30, 2004.*

Petitioner testified that she was on the HCG diet and lost about fifty pounds.

Medical documentation indicates:

- On May 6, 2016 Petitioner weighed 282 pounds with a BMI of 44.2 and was 5'5". She suffered from hypertension, gallstones, Gastroesophageal Reflux disease, menstrual irregularities, chronic back pain, migraines, depression, anxiety and weight-bearing

arthralgia. She has made multiple attempts to lose weight including HCG shots and Phentermine.

- Psychiatric Evaluation done 10/13/16. Weight 286 pounds. Not currently in a structured exercise program.
- 8/26/15 Medical Record. Current weight is 282.58 pounds. Current medications include Amlodipine and HCTZ.
- 10/13/2015 Medical Record. Current weight 286.50 pounds.
- 11/30/15. 295.9 pounds, BMI 46.5

The MHP guidelines provides that surgery for morbid obesity is an alternative to traditional weight loss methods. The Apollo Managed Care Criteria page 6 of 13 indicates: Member's participation in a physician-supervised nutrition and exercise program must be documented in the medical records 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 weight gain during the program.

Additionally, the MAHP Bariatric surgery Guidelines for coverage (Appendix B), number 5 indicates: documented compliance with weight loss program including diet, exercise, and behavioral modification for a maximum of one year.

Based upon the documentation, [REDACTED] determined that the denial of authorization for Bariatric surgery was appropriately issued. Medical records for Petitioner show that the member's weight fluctuated with weight gain as much as nine pounds and weight loss as much as three pounds from month to month. Petitioner had a fourteen pound net weight gain during the weight-loss program. Weight gain does not indicate compliance with weight-loss program.

In the instant case, Petitioner has not established by the necessary competent, material and substantial evidence on the record that she has attended at least 12 months of physician documented successful participation in a physician supervised weight loss program. The conditions required for coverage were not met based upon medical information submitted with the Prior Authorization request. The MHP does not have discretion to approve Petitioner's request when Petitioner has not met the criteria for approval. The decision to deny the request for prior authorization for bariatric surgery must be upheld under the circumstances.

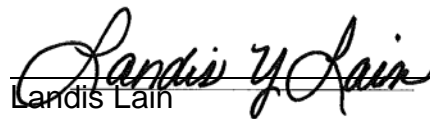
**DECISION AND ORDER**

Based on the above findings of fact and conclusions of law, the Administrative Law Judge finds that [REDACTED] properly deny Petitioner's request for laparoscopic sleeve gastrectomy surgery under the circumstances. Petitioner may resubmit additional medical information when she completes at least one year of physician documented successful participation in a physician supervised weight loss program.

**IT IS HEREBY ORDERED:**

Accordingly, the MHP's decision to deny claimant's request for prior authorization for Bariatric surgery 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]

**Petitioner**

[REDACTED]

**Community Health Rep**

[REDACTED]