



RICK SNYDER
GOVERNOR

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

MIKE ZIMMER
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
MAHS Docket No.: 16-000537
[REDACTED]
[REDACTED]

ADMINISTRATIVE LAW JUDGE: Steven Kibit

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 the Petitioner's request for a hearing.

After due notice, a hearing was held on [REDACTED]. Petitioner appeared and testified on her own behalf. [REDACTED], Appeals Coordinator, appeared and testified on behalf of [REDACTED], the Respondent Medicaid Health Plan (MHP).

ISSUE

Did the Medicaid Health Plan properly deny Petitioner's request for bilateral breast reduction 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 [REDACTED]-year-old Medicaid beneficiary who is enrolled in the Respondent MHP. (Exhibit A, page 4).
2. On or about [REDACTED], the MHP received a prior authorization request submitted on behalf of Petitioner by her doctor and requesting bilateral breast reduction surgery. (Exhibit A, pages 4-7).
3. As part of that request, Petitioner's doctor noted that he was "including a picture of the patient's chest wall and evidence of the necessity of the surgery from her primary physician." (Exhibit A, page 4).

4. On [REDACTED], Respondent sent Petitioner written notice that the prior authorization request for bilateral breast reduction surgery was denied. (Exhibit A, page 16).

5. In that notice of denial, Respondent stated:

The services that was requested for you was a breast reduction. The provided documentation does not show severe shoulder grooving on the photo or a rash that was unresponsive to prescription medication. Also, per 4D Pharmacy Management, there has been no prescriptions filled for topical treatment for rashes.

The criteria used to make this decision is attached. We used [REDACTED] for Reduction Mammoplasty/Breast Reduction Surgery. The criteria is widely used and developed utilizing evidence based-peer reviewed journals, research and specialists to determine medical necessity. Also, according to the Certificate of Coverage, services and supplies must be medically necessary. Based on the documentation provided to us, we are unable to approve the breast reduction for you at this time.

Exhibit A, page 16

6. That same day, Respondent also sent a similar notice of denial to the doctor who submitted the prior authorization request. (Exhibit A, page 17).

7. On [REDACTED] [REDACTED] [REDACTED], the doctor sent a letter to Respondent disagreeing with the MHP and stating that he had read the criteria and Petitioner met every part of it. (Exhibit A, page 18).

8. His letter also stated that: "Patient has shoulder grooving documented by the pictures." (Exhibit A, page 18).

9. Respondent reviewed the prior authorization request again on [REDACTED] [REDACTED] and again found that the requested surgery was not medically necessary. (Exhibit A, pages 19-20).

10. On [REDACTED] it also sent Petitioner's primary care physician a

request for medical records, but none were ever received. (Exhibit A, pages 21-23; Testimony of Respondent's representative).

11. On [REDACTED], Petitioner sent Respondent a letter disagreeing with the denial. (Exhibit A, pages 26-28).
12. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received the request for hearing filed in this matter regarding the denial of bilateral breast reduction surgery. (Exhibit A, pages 26-28).

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.

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.

*MPM, October 1, 2015 version
Medicaid Health Plan Chapter, page 1
(Emphasis added by ALJ)*

Pursuant to the above policy and its contract with the Department, the MHP has developed prior authorization requirements and utilization management and review criteria. In this case specifically, as provided in the denial notice and credibly testified to by the MHP's witness, the MHP utilized [REDACTED] Managed Care Medical Review Criteria. In the pertinent part, that criteria states that breast reduction surgery is considered medically necessary when the following criteria is met:

Reduction Mammoplasty

1. Reduction mammoplasty may be indicated as needed to achieve symmetry following a surgical procedure for breast cancer . . .
2. Reduction mammoplasty may also be indicated adjunctive to surgery requiring splitting of the sternum . . .
3. The following indications (all must apply) will be required to determine medical necessity for this procedure prior to authorization unless the patient meets criteria in either the 1 or 2 preceding paragraphs:
 - a. Excessively large pendulous natural (no implants) breasts out of proportion to the rest of the individual's normal or usual body habitus, and
 - b. Pain involving the upper back and/or shoulder regions (thoracic or cervical), severe; chronic (at least 6 months duration) that is inadequately responsive to conservative therapy (appropriate breast support, weight loss if necessary) for one year or longer; and/or

- painful kyphosis documented by x-ray is present and/or thoracic nerve root compression with ulnar distribution pain is demonstrable, and
- c. Shoulder bra strap discomfort (using appropriate bra support and wide bra straps) with demonstrable severe shoulder grooves due to bra strap pressure and/or intractable intertrigo unresponsive to appropriate topical therapy demonstrated on a frontal and lateral photo placed in a sealed envelope with the authorization request and following review, returned to the requesting physician to be maintained as a part of the permanent medical record; and
 - d. Three or more years since the start of regular menses or 18 years or older.

Exhibit A, pages 9-10

Here, the notice of denial and the MHP's witness' testimony both provide that Petitioner's request for breast reduction surgery was denied pursuant to the above policies. Specifically, they noted that, while Petitioner meets some of the criteria, the submitted request failed to demonstrate, through the use of frontal and lateral photos, shoulder bra strap discomfort with demonstrable severe shoulder grooves due to bra strap pressure and/or intractable intertrigo unresponsive to appropriate topical therapy.

In response, Petitioner testified that she does not know why only one photo was submitted as the doctor took more than one picture and that some of them would have demonstrated her severe shoulder grooves. She also testified that she has had skin breakdowns in the past.

Petitioner bears the burden of proving by a preponderance of the evidence that the MHP erred in denying her prior authorization request. Moreover, the undersigned Administrative Law Judge is limited to reviewing the MHP's decision in light of the information available at the time the decision was made.

Given the record in this case, the undersigned Administrative Law Judge finds that Petitioner 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, Petitioner clearly does not meet the requirements for breast reduction surgery as she has not documented, through the use of photos, shoulder bra strap discomfort with demonstrable severe shoulder grooves due to bra strap pressure and/or intractable intertrigo unresponsive to appropriate topical therapy. Moreover, while Petitioner's

doctor may have taken multiple photos and her surgeon referred to “pictures” that document the shoulder grooving, the MHP’s witness credibly testified that only one photo was attached to the prior authorization request and the request itself only referenced “a picture of the patient’s chest wall” as being included. That single photo is of Petitioner’s chest wall and it fails to reflect any shoulder grooving. The MHP must rely on what was submitted and, in this case, the submitted documentation failed to demonstrate that Petitioner met all of the requirements for the surgery.

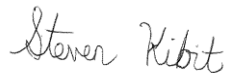
To the extent Petitioner has additional or updated information to provide, she is free to have her doctor resubmit the request for a breast reduction surgery, along all the relevant documents and information. However, with respect to the decision at issue in this case, the MHP’s actions must be affirmed given the available information.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, decides that the Respondent properly denied Petitioner’s request for breast reduction surgery.

IT IS THEREFORE, ORDERED that:

The Respondent’s decision is **AFFIRMED**.



SK/db

Steven Kibit
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

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

DHHS -Dept Contact

[REDACTED]
[REDACTED]
[REDACTED]

Community Health Rep

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]