



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: [REDACTED]
MAHS Docket No.: 16-003963
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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]. [REDACTED], friend and Authorized Hearing Representative (AHR) appeared on behalf of the Petitioner. [REDACTED], Paralegal, represented [REDACTED], the Medicaid Health Plan (MHP). [REDACTED], Medical Director, appeared as a witness for the MHP.

During the hearing proceedings, the MHP's Hearing Summary packet was admitted as Exhibit A, pp. 1-24.

ISSUE

Did the MHP properly deny Petitioner's request for 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 Medicaid beneficiary who has been enrolled in the Respondent MHP since [REDACTED]. (Exhibit A, p. 1)
2. On [REDACTED], the MHP received a prior authorization request for bilateral breast reduction surgery for Petitioner. The submitted documentation included a fax coversheet; the prior authorization request form; a [REDACTED], letter from the plastic and reconstructive surgeon; a [REDACTED], office visit record from the plastic and

reconstructive surgeon; and a [REDACTED], letter from the Rehab Director of the physical therapy clinic. (Exhibit A, pp. 14-19)

3. On [REDACTED], the MHP sent Petitioner written notice that the prior authorization request for breast reduction surgery was denied. In part, the denial stated:

Your doctor asked for breast reduction surgery for you. Your health plan's policy shows that this is needed or medically necessary if you have infections due to your breasts size. It is needed if your breast size keeps you from doing the things you need to do in your daily life. We also need to know your bra size. We reviewed your doctor's notes. They did not contain the required information. Therefore, the doctor's request is not approved. It is not medically necessary. Please talk to your doctor if you have questions.

(Exhibit A, p. 6)

4. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received the request for hearing filed in this matter. (Exhibit A, pp. 4-5)

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 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 Health and Human Services (MDHHS) 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 MDHHS 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, January 1, 2016, version
Medicaid Health Plans Chapter, p. 1*

The MPM addresses surgery:

SECTION 11 – SURGERY – GENERAL

Medicaid covers medically necessary surgical procedures.

*MPM, January 1, 2016, version
Provider Chapter, p. 43*

Regarding procedures that may be considered cosmetic surgery, the MPM states:

12.3 COSMETIC SURGERY

Medicaid only covers cosmetic surgery if PA has been obtained. The physician may request PA if any of the following exist:

- The condition interferes with employment.
- It causes significant disability or psychological trauma (as documented by psychiatric evaluation).
- It is a component of a program of reconstructive surgery for congenital deformity or trauma.
- It contributes to a major health problem.

The physician must identify the specific reasons any of the above criteria are met in the PA request.

*MPM, January 1, 2016, version
Provider Chapter, p. 49*

The MHP reviewed Petitioner's prior authorization request under their Coverage Determination Guideline for Breast Reduction Surgery (MHP Criteria). (Exhibit A, pp. 8-13) In part, the MHP's criteria states:

Criteria for a Coverage Determination as Reconstructive: Breast reduction surgery is considered reconstructive and medically necessary when the following criteria are met and a physiologic functional impairment is identified:

A. Macromastia is the primary etiology of the member's functional impairment or impairments (as defined in the Definitions section below).

The following are examples of functional impairments that must be attributable to macromastia to be considered (not an all-inclusive list):

- Severe skin excoriation/intertrigo unresponsive to medical management
- Severe restriction of physical activities that meets the definition of functional impairment below
- Signs and symptoms of nerve compression that are unresponsive to medical management (e.g. ulnar paresthesias)
- Acquired kyphosis that is attributed to macromastia
- Chronic breast pain due to weight of the breasts
- Upper back, neck, or shoulder pain
- Shoulder grooving from Bra straps
- Headache

and

- B. The amount of tissue to be removed plots above the 22nd percentile; or
- C. If the amount of tissue to be removed plots between the 5th and 22nd percentiles, the procedure may be with reconstructive or cosmetic; the determination is based on the review of the information provided; and
- D. Diagnostic tests, if done, have ruled out other causes of the functional impairment; and
- E. The proposed procedure is likely to result in significant improvement of the functional impairment.

(Exhibit A, p. 9)

As noted above, MHPs must operate consistently with all applicable published Medicaid coverage and limitation policies but are allowed to develop prior authorization requirements and utilization management and review criteria that differ from Medicaid requirements. The MHP's prior approval process is allowable. Further, the MHP Criteria utilized in this case are consistent with the MPM policy to cover medically necessary surgical procedures.

The MHP's Medical Director explained that upon review of the documentation submitted with Petitioner's prior authorization request, it did not appear that there has been an evaluation of Petitioner's back pain that ruled out other causes. The medical documentation notes Petitioner's chronic back and neck pain, which affects her ability to

perform activities of daily living, as well as the trial of physical therapy with no improvement. However, the information submitted to the MHP was not sufficient to establish that other causes, besides breast size, have been ruled out as the primary cause of Petitioner's chronic pain and functional impairments. (Exhibit A, pp. 14-19; Medical Director Testimony)

Petitioner's AHR testified that Petitioner previously had heart surgery. Petitioner gets chest pain, shoulder pain, and back pain. Petitioner slouches because her breasts are heavy. Petitioner tries to stand straight, but walks with a limp. Petitioner wakes through the night. Because of the weight from her breasts, Petitioner rolls around and has to try to sleep on her sides. Petitioner's chest pain is worse after the heart surgery. Petitioner cannot do what she usually does throughout the day without pain. Petitioner cannot walk for long without having to sit and rest. When therapy did not help, Petitioner went back to her doctor and the bilateral breast reduction was recommended. Petitioner saw other doctors who also recommended this surgery. (AHR Testimony)

Unfortunately, for the [REDACTED], prior authorization request, the MHP only received the fax cover sheet; the prior authorization request form; a [REDACTED], letter from the plastic and reconstructive surgeon; a [REDACTED], office visit record from the plastic and reconstructive surgeon; and a [REDACTED], letter from the Rehab Director of the physical therapy clinic. (Exhibit A, pp. 14-19) These records do not show how other causes for Petitioner's chronic pain and functional impairment were ruled out. This would not only support that breast size is the primary cause of Petitioner's chronic pain and functional impairment, but also indicate that the breast reduction would likely result in significant improvement of her chronic pain and functional impairment. Based on the information available to the MHP at the time of the [REDACTED], determination, the medical documentation was insufficient to show that other causes for Petitioner's chronic pain and functional impairments had been ruled out to establish medical necessity for the requested breast reduction surgery. Accordingly the [REDACTED], denial is upheld based on the information submitted to the MHP at that time.

During the hearing proceedings, the MHP obtained permission from the AHR to contact Petitioner's doctor to assist with gathering any additional information that could be used for the MHP to reconsider the prior authorization request. If needed, Petitioner can also have her doctor submit another prior authorization request to the MHP with additional documentation supporting the medical necessity of the requested breast reduction surgery.

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 prior authorization request for breast reduction surgery based on the information submitted to them at the time of the [REDACTED], determination.

IT IS, THEREFORE, ORDERED that:

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



Colleen Lack

Administrative Law Judge

for Nick Lyon, Director

Department of Health and Human Services

CL/cg

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]

Authorized Hearing Rep.

[REDACTED]

Petitioner

[REDACTED]

Community Health Rep

[REDACTED]