



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: January 10, 2017
MAHS Docket No.: 16-016274
Agency No.: [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 telephone hearing was held on January 4, 2017. 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 Respondent 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 Medicaid beneficiary enrolled in the Respondent MHP. (Exhibit A, page 4).
2. On September 19, 2016, Respondent received a prior authorization request for bilateral breast reduction surgery submitted on Petitioner's behalf. (Exhibit A, pages 4-6).
3. A letter dated [REDACTED] from the doctor who would perform the surgery to Petitioner's primary care physician was submitted along with the prior authorization request. (Exhibit A, page 5).

4. That letter stated in part:

Thank you for asking me to see your patient, [Petitioner] to discuss her concerns of continued pain in her upper back and neck on a constant basis due to breasts of excessive size and weight. She has also developed shoulder grooving. She has used aspirin and motrin products and support bras with no relief from the pain.

[Petitioner] is 52 years old, 5'1.5" and weighs 215 pounds. She is currently wearing a 44DDbra to support the breasts but is still having difficulties. On physical exam, there is evidence of shoulder grooving, breast are extremely ptotic. The sternal notch to nipple distance is 47cm right and left; the inflammatory fold to nipple distance is 19cm right and 20cm left. The fold itself is 24cm vertically from sternal notch. I feel that this patient is a good candidate for bilateral reduction mammoplasty and would estimate the removal in excess of 650 grams of tissue from each breast.

Exhibit A, page 5

5. Three photographs were also attached to the prior authorization request, but none showed any shoulder grooving or rash. (Exhibit A, page 6; Testimony of Petitioner).
6. On September 30, 2016, Respondent sent Petitioner and her medical provider written notices that the prior authorization request was denied. (Exhibit A, pages 14-15).
7. Regarding the reason the for denial, the notice sent to Petitioner stated in part:

The service that was requested for you was bilateral breast reduction. The provided documentation does not show severe shoulder grooving on the photos and/or a rash that was unresponsive to prescription medication.

The criteria used to make this decision are

attached. We used Apollo for Breast Procedures: Augmentation or Reduction Mammoplasty. This 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 15

8. In a letter dated October 11, 2016, Petitioner appealed the denial of her request with Respondent. (Exhibit A, pages 17-20).
9. Specifically, Petitioner wrote in part:

At one time I did have grooves on my shoulders and I changed to a bra with padded straps. Several times a year I do have a painful rash under my breasts. Summer of 2015 it got so bad I cut up my of [sic] my father's undershirts and put a strip under the band of my bra. I also have had back and neck pain for years. I have had physical therapy last year for four months and this year and still need to go back for more.

Exhibit A, page 17

10. A physician for Respondent reviewed that request and, on October 18, 2016, determined that it the requested surgery was not medically necessary. (Exhibit A, pages 21-22).
11. On October 25, 2016, Petitioner and Respondent's Appeals Committee held a meeting regarding her request. (Testimony of Respondent's witness).
12. Petitioner also provided additional letters from medical providers at that time, including an [REDACTED] letter from a [REDACTED] stating that Petitioner has had continued pain, despite undergoing right shoulder surgery, and that she would benefit from decreased stress from bra strap and breast reduction. (Exhibit A, page 23; Testimony of Respondent's witness).

13. The other letters addressed Petitioner's past physical therapy and chiropractic care. (Exhibit A, pages 24-26).
14. On October 25, 2016, Respondent sent Petitioner written notice that her request for bilateral breast reduction surgery had again been denied. (Exhibit A, pages 27-28).
15. Specifically, the notice indicated that the previous denial had been upheld because the "provided documentation does not show severe shoulder grooving on the photos and/or a rash that was unresponsive to prescription medication." (Exhibit A, page 27).
16. On November 7, 2016, the Michigan Administrative Hearing System (MAHS) received a request for hearing filed by Petitioner with respect to that denial. (Exhibit A, pages 30-38).

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 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, July 1, 2016 version
Medicaid Health Plans Chapter, page 1
(Emphasis added by ALJ)*

Pursuant to the above policy and its contract with the Department, Respondent has developed prior authorization requirements and utilization and management and review criteria. In particular, as testified to by Respondent's witness and provided in its exhibit, Respondent uses Apollo Managed Care Medical Review Guidelines for Managing Care in reviewing requests for breast procedures.

Moreover, with respect to breast reductions, that criteria specifically provides:

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, page 8

Here, the notices of denial and Respondent's witness' testimony all 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, any 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, while a newer bra has helped, she does have grooving in her shoulders, but that it just does not photograph well. She also testified that, while she did not have one at the time of the request in this case, she has a rash on her breasts during the summer months and that nothing relieves it. Petitioner further testified that she does not want to keep living in pain.

Petitioner bears the burden of proving by a preponderance of the evidence that Respondent erred in denying her prior authorization request. Moreover, the

undersigned Administrative Law Judge is limited to reviewing Respondent'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 her burden of proof and that Respondent's decision must therefore be affirmed. Respondent 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 any 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 claims that she has shoulder grooving and has had rashes in the past, it is undisputed that neither are shown in the photographs provided to Respondent. Respondent 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 that would demonstrate that she meets the above criteria, she and her doctor are free to have a new prior authorization submitted along with that information. With respect to the decision at issue in this case however, Petitioner has failed to meet her burden of proof and the denial of her prior authorization request must be affirmed.


DECISION AND ORDER

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

IT IS, THEREFORE, ORDERED that:

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

SK/tm



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

DHHS -Dept Contact

[REDACTED]
[REDACTED]
[REDACTED]
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