



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR



Date Mailed: July 7, 2020
MOAHR Docket No.: 20-000252
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

DECISION AND ORDER

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 *et seq*; 42 CFR 438.400 *et seq*; and Mich Admin Code, R 792.11002.

After due notice, a telephone hearing commenced on March 10, 2020. [REDACTED] the Petitioner, appeared on his own behalf. The Department of Health and Human Services contracted Medicaid Health Plan (MHP), Blue Cross Complete, was represented by Camille Butler, Compliance Analyst. Dr. Donald Beam, Medical Director; Benita Tipton, Appeals Manager; and Colby Lynn, Grievance Coordinator, appeared as witnesses for the MHP. Peter Chona, Bromberg & Associates, provided interpretation services.

During the hearing proceeding, the MHP's documentation was admitted as Exhibits 1-14.

ISSUE

Did the Medicaid Health Plan properly deny Petitioner's request for lumbar decompression surgery (lower back 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 MHP.
2. Petitioner is [REDACTED] years old, date of birth [REDACTED] 1957. (Exhibit 1)

3. On December 11, 2019, the MHP received a request for prior authorization for lumbar decompression surgery for Petitioner for a diagnosis of lumbar spinal stenosis. (Exhibit 1)
4. On December 23, 2019, Petitioner's prior authorization request was reviewed for medical necessity under the InterQual criteria. The procedure was not recommended because current evidence did not support the requested procedure in this clinical scenario. There was no record the Petitioner had tried and failed epidural steroid injections. There was no evidence of nerve root compression by imaging. There was no record of epidural abscess, discitis, or cauda equina syndrome. (Exhibit 4; Hearing Summary)
5. On December 23, 2019, the MHP sent Petitioner written notice that the request for lumbar decompression surgery was denied. (Exhibit 6)
6. On December 27, 2019, the MHP completed a peer to peer review completed with Petitioner's doctor. It was noted that Petitioner did not want to try epidural steroid injections. The prior denial was upheld because Petitioner had not followed the appropriate protocol. (Hearing Summary)
7. On December 27, 2019, the MHP received Petitioner's verbal request for an Internal Appeal. (Exhibits 8 and 12)
8. On January 22, 2020, the MHP issued a dismissal letter regarding the December 27, 2019, verbal request for an Internal Appeal because it was not followed with a written request within 30 calendar days. (Exhibit 12)
9. On January 23, 2020, the Michigan Office of Administrative Hearings and Rules received Petitioner's request for an administrative hearing. (Hearing Request)
10. On February 3, 2020, the MHP received Petitioner's written request for an Internal Appeal. (Exhibits 7 and 13)
11. On February 12, 2020, the MHP issued a determination letter from the Internal Appeal upholding the original denial. There was no record of a trial of epidural steroid injections to the lower back. There was no record of lower back nerve root compression seen on radiology imaging such as x-ray, CT, or MRI. (Exhibits 5 and 14)

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, Medicaid Health Plans Chapter,
January 1, 2020, p. 1.

In this case, Petitioner is seeking coverage of lumbar decompression surgery.

The practitioner chapter of the MPM addresses surgery:

SECTION 11 – SURGERY – GENERAL

Medicaid covers medically necessary surgical procedures.

*MPM, Dental Chapter,
January 1, 2020, p. 46*

In this case, the MHP utilized InterQual criteria as well as AmeriHealth Caritas criteria.

The InterQual criteria for lumbar decompression with or without fusion states:

Choose one:

- ☐ Age $\geq$ 18
- ☐ Age $\leq$ 18

Choose one:

- ☐ Lumbar disc herniation (unilateral symptoms) and nerve root compression by imaging
- ☐ Lumbar foraminal stenosis (unilateral symptoms) and nerve root compression by imaging
- ☐ Cauda equina syndrome (urgent)
- ☐ Lumbar spinal stenosis (bilateral symptoms) and spinal compression by imaging
- ☐ Radiculopathy post herniated disc surgery (unilateral symptoms) and nerve root compression by imaging
- ☐ Discitis or epidural abscess by MRI
- ☐ None of the above

(Exhibit 4)

The AmeriHealth Caritas criteria for Spinal surgeries states:

8. Lumbar decompression with or without discectomy is considered medically necessary for rapid progression of neurologic impairment (e.g. foot drop, extreme weakness, numbness or decreased sensation, saddle anesthesia, or bladder or bowel dysfunction) confirmed by imaging studies (e.g. computed tomography or magnetic resonance imaging).

(Exhibit 14)

As noted in the above cited MHP chapter of the MPM, MHPs must operate consistently with all applicable published Medicaid coverage and limitation policies but are allowed

to provide services over and above those specified and are to develop prior authorization requirements and utilization management and review criteria that differ from Medicaid requirements. The InterQual and AmeriHealth Caritas criteria are consistent with the policy from the Practitioner chapter of the MPM to provide medically necessary surgical procedures.

The MHP asserts that the submitted documentation did not establish that Petitioner met the InterQual or AmeriHealth Caritas criteria for the requested lumbar decompression surgery. The Medical Director summarized the documentation the MHP received. The prior authorization request for the lumbar decompression surgery listed a diagnosis of spinal stenosis of the lumbar region with neurogenic claudication. The findings indicate: Petitioner failed conservative therapy in the form of physical therapy; there were findings of lumbar spinal stenosis seen on MRI; and Petitioner is not interested in epidural injections. The MRI report documented multilevel spondyloarthropathy without high-grade spinal canal stenosis. A physical therapy record indicated Petitioner: completed 11 visits; was able to sit without pain; reported improved flexibility; was unable to stand without pain for greater than 10 minutes; had increased pain with stairs; and was unable to control descent standing to kneeling for praying. (Exhibit 1) Overall, Petitioner's MRI was not totally conclusive. The physical therapy failed to help Petitioner enough. However, Petitioner failed to go through pain management, which consists of epidural steroid injections and possible rhizotomy. (Medical Director Testimony)

Petitioner testified that he went to the doctor and an MRI was requested. After that, Petitioner was told he had a problem in his lower back. Petitioner noted that the physical therapy visits were over 6 weeks and did not help him. Petitioner asked what was recommended to get rid of the pain. Petitioner was told two options, trying injections or going through a procedure. It was not known if the injections would help and injections would have to be done every three weeks for three months. Petitioner explained that he needed a good treatment because he has to go back to his work. Petitioner has nine children that he provides for. Petitioner wanted something fast so he could go back to work as soon as possible. The doctor told Petitioner the procedure would be good for him and can give him a result up to 90% to treat his pain. The doctor then told Petitioner his request to have the procedure was denied but they had approved the injections. Petitioner said that was fine if it would give him a good result. Petitioner has had to sit at home and do nothing waiting to go through the injections. The pain is getting worse and spreading beyond his lower back to his feet. Petitioner is now having trouble controlling his bladder as well. Petitioner has not had any injections yet and indicated they have been denied. Appointments have been made and nothing has been done. (Petitioner Testimony)

The Appeals Manager noted that the MHP approved the epidural steroid injections and there is an approval on the system. (Appeals Manager Testimony)

Petitioner bears the burden of proving by a preponderance of the evidence that the MHP erred in denying his request for lumbar decompression surgery. Petitioner has not met this burden based on the documentation submitted to the MHP for this prior

authorization request. The [REDACTED] 2019, MRI showed documented multilevel spondyloarthropathy without high-grade spinal canal stenosis. (Exhibit 1) At the time of the [REDACTED] 2019, appointment, Petitioner's pain was constant, radiated to the bilateral thighs, and there was no numbness or tingling of the lower extremities. Petitioner had urinary urgency and denied bowel incontinence. (Exhibit 1) Petitioner tried physical therapy, but did not try epidural steroid injections. (Exhibit 1) The MRI report did not indicate high-grade spinal stenosis and the documentation did not indicate rapid progression of neurologic impairment at that time. Accordingly, the MHP's denial of the December 11, 2019, prior authorization request lumbar decompression surgery is upheld based on the information available at that time.

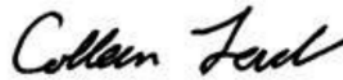
Petitioner's testimony indicated there have been changes with his condition, such as worsening pain, pain radiating further (to his feet), and trouble controlling his bladder. Petitioner also indicated he was willing to try the epidural steroid injections. If he has not already done so, Petitioner may wish to have another prior authorization request submitted to the MHP with further supporting documentation.

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 lumbar decompression surgery based on the available information.

IT IS, THEREFORE, ORDERED that:

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



CL/dh

Colleen Lack
Administrative Law Judge
for Robert Gordon, 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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30763
Lansing, Michigan 48909-8139

DHHS -Dept Contact

Managed Care Plan Division
CCC, 7th Floor
Lansing, MI 48919

Community Health Rep

Blue Cross Complete
Blue Cross Complete of Michigan
4000 Town Center, STE 1300
Southfield, MI 48075

Petitioner

[REDACTED]
[REDACTED] MI [REDACTED]