



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

Date Mailed: April 1, 2021
MOAHR Docket No.: 21-000849
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

DECISION AND ORDER

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; 42 CFR 438.400 to 438.424; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on March 30, 2021. Petitioner, [REDACTED] appeared with his authorized representative, [REDACTED]. Respondent, Molina Healthcare, had Lisa Johnson, Grievance and Appeals Lead, and Dr. Keith Tarter, Senior Medical Director, appear as its representatives. Neither party had any additional witnesses.

One exhibit was admitted into evidence during the hearing. A 41-page packet of documents provided by Respondent was admitted collectively as Respondent's Exhibit A.

ISSUE

Whether Molina Healthcare properly denied Petitioner's request for ear 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, and Respondent provides his Medicaid benefits.
2. Children's Hospital of Michigan requested prior authorization from Respondent for an ear surgery for Petitioner.
3. Children's Hospital of Michigan included a note from its surgeon that stated, "this is a [REDACTED] year-old boy who has a congenital anomaly of the ears, the right ear with lack of antithetical fold and conchal excess on both sides. The right ear especially is significantly distanced from the mastoid area, making it difficult to

wear hats and potentially catching on things. The routine standard of care for treatment of this is reconstruction of the ear with reconstruction of the antithetical fold and excision of the conchal excess.”

4. Respondent reviewed the request for prior authorization and determined that the procedure was cosmetic based on the documentation provided in support of the request.
5. Respondent determined that the procedure was cosmetic because the surgeon stated that Petitioner’s ear condition makes it difficult for him to wear hats and makes it possible for him to catch it on things.
6. Respondent made its determination based on its utilization guideline for cosmetic surgery, which sets criteria for when a procedure will be considered a medically necessary cosmetic procedure.
7. On December 4, 2020, Respondent issued a denial letter to Petitioner to notify him that the ear surgery was denied. Respondent stated, “the notes show your child has an ear condition. The notes show your child’s right ear size is greater than the left. However, this type of procedure is considered cosmetic. Services for cosmetic purposes is not a covered benefit. The notes do not show this surgery is needed to improve your child’s hearing. Therefore, this does not meet criteria. Please speak to your child’s doctor about other treatment options.”
8. On January 14, 2021, Petitioner appealed Respondent’s denial.
9. On February 10, 2021, Respondent issued a denial letter to Petitioner to notify him that his appeal was denied. Respondent stated, “the notes show the member has an ear condition. The notes show that the member’s right ear size is greater than the left. However, this type of procedure is considered cosmetic. Services for cosmetic purposes is not a covered benefit. The notes do not show this surgery is needed to improve the member’s hearing. The notes do not show that the member’s condition meets criteria.”
10. On February 22, 2021, Petitioner appealed Respondent’s denial.

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.

Respondent is a Medicaid Health Plan that provides Medicaid benefits to individual enrollees, including Petitioner. Respondent denied Petitioner's request for ear surgery because Respondent determined that Petitioner's ear surgery was cosmetic and not medically necessary.

The Medicaid Provider Manual contains policies related to Medicaid services. The Medicaid Provider Manual states that elective cosmetic and procedures are not covered. *MDHHS Medicaid Provider Manual* (January 1, 2021), General Information for Providers Chapter, Section 8.3, p. 23. However, Medicaid provides coverage for cosmetic surgery when prior authorization has been obtained. *Id.* at Practitioners Chapter, Section 12.3, p. 52. Prior authorization may be requested when any one of the following conditions are met: (1) the condition interferes with employment; (2) the condition causes significant disability or psychological trauma; (3) the condition is a component of a program of reconstructive surgery for congenital deformity or trauma; or (4) the condition contributes to a major health problem. *Id.*

Respondent has its own guidelines that it uses to determine whether to grant prior authorization for cosmetic surgery. Respondent's guidelines state that cosmetic surgery is medically necessary when any one of the following conditions are met: (1) the condition is potentially malignant, causes extreme pain, is a recurrent infection, or it causes extreme emotional distress; (2) required to correct an injury; (3) part of a post-mastectomy surgery; or (4) required to correct congenital defects such as cleft lip or cleft palate.

Respondent determined that Petitioner's ear surgery was cosmetic and not medically necessary because Respondent determined that Petitioner's surgery did not meet any of the conditions set forth in its guidelines. However, upon reviewing the prior authorization request and Respondent's guidelines, it is apparent that Respondent did not act properly. Petitioner's provider, Children's Hospital of Michigan, identified the surgery as a surgery required to correct a congenital anomaly, and surgeries to correct congenital problems are covered by both the Medicaid Provider Manual and Respondent's guidelines. Thus, since Petitioner's ear surgery is required to correct a congenital problem, and since surgeries to correct congenital problems are considered medically necessary cosmetic procedures, Respondent improperly denied Petitioner's request for ear surgery.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that Respondent did not properly deny Petitioner's request for ear surgery.

IT IS ORDERED Molina Healthcare's decision is **REVERSED**.

JK/dh



Jeffrey Kemm

Administrative Law Judge
for Elizabeth Hertel, 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

Authorized Hearing Rep.

[REDACTED]
[REDACTED] MI [REDACTED]

Community Health Rep

Molina Healthcare of Michigan
Chasty Lay
880 W. Long Lake Rd., Suite 600
Troy, MI 48098

Petitioner

[REDACTED]
[REDACTED] MI [REDACTED]