



GRETCHEN WHITMER
GOVERNOR

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

MARLON I. BROWN, DPA
ACTING DIRECTOR

Date Mailed: December 21, 2023
MOAHR Docket No.: 23-007975
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Steven Kibit

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and upon Petitioner's request for a hearing.

After due notice, a telephone hearing was held on December 14, 2023. Petitioner [REDACTED] (Petitioner) appeared and testified on her own behalf. Johanna Novak, General Counsel, appeared and testified on behalf of Respondent Upper Peninsula Health Plan (Respondent).

During the hearing, Petitioner's request for hearing was admitted in the record without objection as Exhibit #1, pages 1-3. Respondent also submitted an evidence packet that was admitted into the record without objection as Exhibit A, pages 1-77. No other proposed exhibits were submitted.

ISSUE

Did Respondent properly deny Petitioner's prior authorization request for 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. Respondent is an Integrated Care Organization (ICO) contracted by the Michigan Department of Health and Human Services (Department or MDHHS) and the Centers for Medicare & Medicare Services (CMS) to provide covered services through the MI Health Link managed care program.
2. Petitioner has been enrolled in the MI Health Link program and authorized for services through Respondent. (Testimony of Respondent's representative).
3. In [REDACTED] of 2023, Petitioner underwent bilateral breast reduction surgery performed by Dr. David Weber, M.D., a plastic surgeon. (Exhibit A, page 19; Testimony of Petitioner).

4. Petitioner then had three follow-up appointments with Dr. Weber. (Testimony of Petitioner).
5. On September 21, 2023, Respondent received a prior authorization request for another surgery to excise redundant soft tissue submitted on Petitioner's behalf by Dr. Weber. (Exhibit A, pages 12-13).
6. As part of that request, there was a note from Dr. Weber dated September 19, 2023, and stating:

HISTORY OF PRESENT ILLNESS: [Petitioner] returns over one month following her bilateral breast reduction. Her only concern is of the excess tissue that remains along the lateral chest wall.

PHYSICAL EXAMINATION: All incisions have healed. She does have redundant skin and soft tissue along the lateral chest wall area. There is no erythema.

IMPRESSION: [Petitioner] has recovered from her recent breast reduction but does have residual soft tissue and skin along the lateral chest wall.

PLAN: I have offered excision of this redundant soft tissue along her lateral chest wall. Lateral extension of her breast scars will be required. The small risk of infection and wound healing difficulties was explained.

She can resume all activities at this time without restriction. She is eager to have the scar revision performed. This will be scheduled under local anesthesia for later this year.

Exhibit A, page 13

7. Respondent then sent the request to AMR Peer Network Review for an independent review. (Exhibit A, page 8).
8. There, the prior authorization request was reviewed by Dr. Ali Soltani, M.D., a physician who is specialized in plastic surgery. (Exhibit A, pages 8-10).
9. On October 4, 2023, Dr. Soltani issued a Peer Reviewer Final Report in which he recommended that the request for surgery be denied on the basis that it is not medically necessary and an uncovered cosmetic surgery. (Exhibit A, pages 8-10).
10. On October 5, 2023, Respondent sent Petitioner written notice that her request for surgery had been denied. (Exhibit A, pages 32-36).

11. With respect to the reason for the denial, the notice stated in part:

We cannot approve your request with the facts given
(Dr. Weber's office notes.

* * *

UPHP MI Health Link Member Hand Book Chapter 4:
Benefits Chart, Section F Benefits not covered by UPHP
MI Health Link, Medicare or Michigan Medicaid, pgs 99-
100, Cosmetic surgery or other cosmetic work, unless
needed because of an accidental injury or to improve a
part of the body that is not shaped right. However, the
plan will pay for reconstruction of a breast after a
mastectomy (breast removal) and for treating the
otherbreast [sic] to match it.

Exhibit A, page 32

12. That same day, Petitioner filed an Internal Appeal with Respondent regarding that decision. (Exhibit #1, page 2).
13. She also submitted photographs and additional medical records. (Exhibit A, pages 40-48).
14. The medical records were Progress Notes from Nurse Practitioner (MP) Tina M. Marshall following an Office Visit with Petitioner on October 9, 2023. (Exhibit A, pages 46-48).
15. In part, the NP stated:

[Petitioner] states that she does have some skin tissue along the lateral sides of the outer breast that do cause her discomfort, especially if she is not in a bra where there is support. She had followed up with the previous surgeon, and he had recommended that he could remove the tissue . . . The patient is here today stating that her insurance needs more information. I do not have any of her postop notes to review . . .

* * *

ASSESSMENT AND PLAN

Abnormal skin tissues to the bilateral sides, status post breast reduction. The patient is going to get copies of her medical records so we can also attach to the referral. She does report that these areas along the bilateral sides do cause discomfort, especially if she is not in a bra. She has no concerns about infection. She is going to contact her insurance company to see if she

can follow up with the surgeon due to having continued discomfort in the surgical sites. She is advised to return immediately with any changes, any fevers, chills, drainage, or signs of infection. The patient is aware of what to watch for. I will hold off on anything until I hear back from the patient in regards to the referral process.

Exhibit A, pages 46-47

16. Respondent then sent Petitioner's Internal Appeal to AMR Peer Review Network for an independent review. (Exhibit A, page 49).
17. There, Petitioner's Internal Appeal was reviewed by Dr. Roger Friedenthal, M.D., a physician who is specialized in plastic surgery. (Exhibit A, pages 49-51).
18. On October 25, 2023, Dr. Friedenthal issued a Peer Reviewer Final Report in which he recommended that the requested surgery be denied. (Exhibit A, pages 49-51).
19. In part, that report stated:

This patient is a [REDACTED] year old female appealing denial of authorization for excision of residual tissue soft tissue along lateral chest wall. She had undergone a bilateral breast reduction and has residual soft tissue along the lateral chest wall. Physical examination confirms redundant skin and soft tissue along the lateral chest wall area without irritation. She is [REDACTED] bs., and BMI [REDACTED]. The member reports that she needs to wear tighter sports bras 24/7. She states that she wants the lumps that are pulling her down gone to reduce discomfort. Photos show fullness of the posterior inferior lateral breast area.

* * *

Is the requested excision of residual tissue soft tissue along lateral chest wall medically necessary? Please explain in detail. **No**

Plan policy states that the following items and services are not covered:

1. Elective or voluntary enhancement procedures or services (including cosmetic purposes) except when medically necessary. [MET]
2. Cosmetic surgery or other cosmetic work, unless it is needed because of an accidental injury or to

improve a part of the body that is not shaped right. However, the plan will pay for reconstruction of a breast after a mastectomy and for treating the other breast to match it. [MET]

The member underwent bilateral reduction mammoplasty and has residual fullness of the posterior inferior lateral breast area. There are no wound healing problems reported. The residual fullness has cosmetic significance but is not a physical disability. Based on the provided guideline (UPHP MI Health Link Member Hand Book Chapter 4: Benefits Chart, Section F Benefits not covered by UPHP MI Health Link, Medicare or Michigan Medicaid, pgs 99-100), the requested excision of residual tissue soft tissue along lateral chest wall is not medically necessary.

* * *

There are no unique clinical circumstances to this particular individual that would make it medically necessary.

Exhibit A, pages 49-50

20. That same day, Respondent sent Petitioner written notice that her Internal Appeal had been denied because an independent reviewer with a specialty in plastic surgery did not find a medical need for skin removal and cosmetic surgery is not covered in Petitioner's circumstances. (Exhibit #1, page 2; Exhibit A, pages 54-57).
21. On November 16, 2023, the Michigan Office of Administrative Hearings and Rules (MOAHR) received a request for hearing filed by Petitioner in this matter. (Exhibit #1, pages 1-3).

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.

As discussed above, Petitioner has been authorized for services through Respondent pursuant to the MI Health Link program. With respect to that program, the applicable version of the Medicaid Provider Manual (MPM) states in part:

SECTION 1 – GENERAL INFORMATION

Effective March 1, 2015, the Michigan Department of Health and Human Services (MDHHS), in partnership with the Centers for Medicare & Medicaid Services (CMS), implemented a new managed care program called MI Health Link. This program integrates into a single coordinated delivery system all physical health care, pharmacy, long term supports and services, and behavioral health care for individuals who are dually eligible for full Medicare and full Medicaid. The goals of the program are to improve coordination of supports and services offered through Medicare and Medicaid, enhance quality of life, improve quality of care, and align financial incentives.

MDHHS and CMS have signed a three-way contract with managed care entities called Integrated Care Organizations (ICOs) to provide Medicare and Medicaid covered acute and primary health care, pharmacy, dental, and long term supports and services (nursing facility and home and community based services). The MI Health Link program also includes a home and community-based services (HCBS) waiver for MI Health Link enrollees who meet nursing facility level of care, choose to live in the community rather than an institution, and have a need for at least one of the waiver services as described in this chapter. This waiver is called the MI Health Link HCBS Waiver.

The Michigan Prepaid Inpatient Health Plans (PIHPs) in the four demonstration regions are responsible for providing all Medicare and Medicaid behavioral health services for individuals who have mental illness, intellectual/developmental disabilities, and/or substance use disorders. The Eligibility and Service Areas section provides a list of the regions and related counties.

* * *

SECTION 5 – COVERED SERVICES

MI Health Link offers the following services:

- Medicare covered services, including pharmacy
- Medicaid State Plan services, including personal care services and hearing aid coverage
- Dental services

- Equivalent to the Medicaid adult dental benefit as described in the Dental Chapter of this manual.
- Long Term Supports and Services (LTSS)
 - Nursing facility services
 - State Plan personal care services
 - Supplemental Services for individuals who live in the community and do not meet nursing facility level of care as determined by the LOCD.
 - MI Health Link HCBS Waiver services for individuals who live in the community and meet nursing facility level of care as determined by the LOCD
- Services provided through PIHPs for individuals' needs related to behavioral health (BH), intellectual/developmental disability (I/DD) and substance use disorders (SUD)

The MI Health Link program waives the requirement for a three-day hospital stay prior to receiving rehabilitation or skilled care in a Michigan licensed nursing facility. Admission requirements include a physician-written order for nursing facility services, a completed LOCD, and a completed Pre-Admission Screening and Resident Review (PASRR).

*MPM, July 1, 2023 version
MI Health Link Chapter, pages 1, 5*

Moreover, with respect to the services covered through the Medicaid State Plan, the MPM also states in part:

8.3 NONCOVERED SERVICES

The items or services listed below are not covered by the Medicaid program:

* * *

- Elective cosmetic surgery or procedures

*MPM, July 1, 2023 version
General Information for Providers Chapter, page 23*

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. Physicians should refer to the General Information for Providers Chapter for specific information for obtaining authorization.

*MPM, July 1, 2023 version
Practitioner Chapter, pages 53*

Consistent with the above policies, Respondent's Handbook has limited coverage of cosmetic surgeries to those that are medically necessary:

In addition to any exclusions or limitations described in the Benefits Chart, **the following items and services are not covered by our plan, Medicare or Michigan Medicaid:**

* * *

Cosmetic surgery or other cosmetic work, unless it is needed because of an accidental injury or to improve a part of the body that is not shaped right. However, the plan will pay for reconstruction of a breast after a mastectomy and for treating the other breast to match it.

Exhibit A, pages 26-27

Here, Respondent denied Petitioner's prior authorization request for surgery to excise redundant soft tissue on the basis that it was not medically necessary and, consequently, non-covered cosmetic surgery. In appealing that decision, Petitioner bears the burden of proving by a preponderance of the evidence that Respondent erred. Moreover, the undersigned Administrative Law Judge is limited to reviewing Respondent's decision in light of the information that was available at the time the decision was made. Given the available information and applicable policies in this case, Petitioner has failed to meet her burden of proof and the Respondent's decision must be affirmed.

Two separate independent reviewers assessed Petitioner's prior authorization request and Internal Appeal on behalf of Respondent and their reports credibly and fully describe their conclusions that Petitioner's request is for non-covered, and non-medically necessary, cosmetic surgery.

Moreover, while Petitioner testified that the surgery was not for cosmetic reasons and instead was requested because of the pain caused by lumps in her skin that developed after her bilateral breast reduction surgery, her testimony is not corroborated by the remainder of the record.

For example, the prior authorization request itself completely fails to support Petitioner's testimony as the surgeon did not discuss any pain or discomfort, and instead only stated that Petitioner has some redundant skin and soft tissue that he could remove. Nothing in that medical documentation indicates a need for the surgery beyond changing how Petitioner looks cosmetically.

Additionally, while Petitioner did see a NP later who at least documented Petitioner's reports of pain and discomfort in her breasts, that NP did not have access to Petitioner's surgical records and did not recommend any skin removal surgery, or any other treatment for that matter. Instead, the NP merely noted that Petitioner was going to get copies of medical records to submit to Respondent and there is nothing in the progress notes finding or recommending surgery.

Petitioner further testified that Respondent denied her requests to see her surgeon again to obtain records, but the only denial at issue in this case was the denial of a request to see her surgeon for skin removal surgery, and regardless, it is not clear why Petitioner would have to see her surgeon again, as opposed to him just submitting a new prior authorization request; if she had been reporting pain to him all along and that was the basis of the request.

To the extent Petitioner has additional or updated information to provide regarding her need for surgery, she can always request such services again in the future. With respect to the issue in this case however, Respondent's decision is affirmed given the information available at the time.

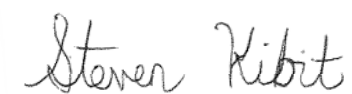
DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Respondent properly denied Petitioner's request for skin removal surgery.

IT IS, THEREFORE, ORDERED that:

Respondent's decision is **AFFIRMED**.

SK/sj



Steven Kibit
Administrative Law Judge

NOTICE OF APPEAL: Petitioner 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

PROOF OF SERVICE

I certify that I served a copy of the foregoing document upon all parties, to their last known addresses in the manner specified below, this 21st day of December 2023.

S. James

S. James

**Michigan Office of Administrative
Hearings and Rules**

Via Electronic Mail:

Petitioner

[REDACTED]
[REDACTED] MI [REDACTED]
[REDACTED]

Community Health Representative

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