

GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
[REDACTED], MI  
[REDACTED]

Date Mailed: July 7, 2020  
MOAHR Docket No.: 20-002066  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Corey Arendt**

**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 July 1, 2020. [REDACTED], Fiancé, and Authorized Hearing Representative (AHR), represented the Petitioner. The Petitioner participated as a witness. Katie Thayer, Appeals, appeared on behalf of Respondent, the Meridian Health Plan of Michigan (Department). Dr. Cynthia Sanders, Senior Medical Director, appeared a witness for the MHP.

Exhibits:

Petitioner	None
Department	A – Hearing Summary

**ISSUE**

Did the Medicaid Health Plan properly deny Petitioner's request for spinal cord stimulator insertion?

**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 with Department. (Exhibit A, p 4).
2. On November 8, 2019, Petitioner's medical provider, provided Respondent with a prior authorization request seeking a spinal cord stimulator insertion. (Exhibit A, pp 8, 12-65).

3. On November 20, 2019, Department sent Petitioner a Notice of Adverse Determination. The notice indicated Petitioner's request was being denied. The notice specifically stated:

Based on eviCore Comprehensive Musculoskeletal Management Guideline CMM 211 – Spinal Cord Stimulators (device used to treat pain), we cannot approve this request. The requested services supported to treat chronic pain that is hard to control or manage and is caused by one of the following. One, ongoing back pain with nerve pain that travels down your leg(s) after spine surgery. Two, complex regional pain syndrome (CRPS). CRPS is a chronic pain illness that affects an arm or leg after a trauma or surgery. Three, stable chest pain, pressure, fullness, squeezing, or pain in the center of the chest. Four, pain caused by severe blockage of the blood vessels that led to reduced blood flow to your hands, feet and/or legs. Your records do not show one of these. (Exhibit A, p 67).

4. On or around January 6, 2020, Department received an Internal Appeal Form. (Exhibit A, pp 76-149).
5. On or around January 13, 2020, Department forwarded to Medical Review, Petitioner's January 6, 2020 appeal. (Exhibit A, p 150).
6. On January 15, 2020, Medical Review upheld the initial denial indicating the request did not meet eviCore guidelines. (Exhibit A, p 150).
7. On January 21, 2020, Department sent Petitioner a Notice of Internal Appeal Decision Denial. The notice specifically stated:

In your appeal letter you stated that you have unmanaged pain that drags you down physically and mentally. The notes show you have and[sic] lower back pain and spondylosis. The eviCore comprehensive Musculoskeletal Management Guideline CMM 211 – Spinal Cord Stimulators (device used to treat pain) requires notes showing one of the following:

- Ongoing back pain with nerve pain that travels down your leg(s) after spine surgery
- Complex regional pain syndrome (CRPS) (CRPS is a chronic pain illness that affects an arm or leg after a trauma or surgery.)
- Stable chest pain, pressure, fullness, squeezing, or pain in the center of the chest

- Pain caused by severe blockage of the blood vessels that led to reduced blood flow to your hands, feet and/or legs.

Therefore, the request remains denied. (Exhibit A, pp 153-154).

8. On or around February 21, 2020, Petitioner requested a Medicaid fair hearing. (Exhibit A, p 8).

### **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.<sup>1</sup>

In this case, the prior authorization request indicated Petitioner is seeking coverage of spinal cord stimulator insertion.

The medical supplier chapter of the MPM addresses surgical procedures:

## **SECTION 11 – SURGERY – GENERAL**

Medicaid covers medically necessary surgical procedures.<sup>2</sup>

In this case, the Department also utilized eviCore Clinical Guidelines for CMM-211: Spinal Cord Stimulators (Exhibit A, pp 162-174). The criterion lists several clinical scenarios for the procedure: chronic intractable pain secondary to failed back surgery syndrome; complex regional pain syndrome (CRPS)/reflex sympathetic dystrophy (RSD); chronic critical limb ischemia (CLI); and chronic stable angina pectoris.

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 eviCore Clinical Guidelines appear to be consistent with the policy from the Practitioner chapter of the MPM to provide medically necessary surgical procedures.

The Department asserts that the submitted documentation did not establish that Petitioner met the criteria for the requested spinal cord stimulator insertion. Both the initial denial as well as the local appeal denial specifically address why the submitted documentation did not meet criteria

Petitioner argued a trial should be performed prior to permanent placement. Respondent indicated that a trial would only be performed if the permanent placement criteria is met.

Petitioner also argued she met the CRPS criteria as evidenced by the documentation found on page 106 where it appears CRPS of both upper and lower extremity's is

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<sup>1</sup> MPM, Medicaid Health Plans, July 1, 2019, p 1.

<sup>2</sup> MPM, Practitioner, July 1, 2019, p 46.

circled. Review of this specific page however, indicates it appears that more likely than not, the circle is part of the written words found below these boxes as other boxes are checked verses being circled and similar forms found elsewhere in the record are void of any marks in the CRPS areas. Petitioner attempted to corroborate these markings with testimony regarding what her doctor had told her. The unidentified doctor did not participate in the hearing and did not provide firsthand testimony. As such, these self-serving statements are uncorroborated and cannot be used for purposes of this hearing.

Therefore, based on the record presented, I find sufficient evidence to affirm the Departments decision to deny the Petitioner's request for a spinal cord stimulator placement.

**DECISION AND ORDER**

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, decides that the Department properly denied the Petitioner's request for spinal cord stimulator insertion based on the information available at that time.

**IT IS, THEREFORE, ORDERED** that:

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

CA/sb

*Corey Arendt*  
Corey Arendt  
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

**Authorized Hearing Rep.**

[REDACTED]  
[REDACTED], MI

**Petitioner**

[REDACTED]  
[REDACTED], MI

**Community Health Rep**

Meridian Health Plan of Michigan Inc.  
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