

GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED] MI 4 [REDACTED]

Date Mailed: August 31, 2020  
MOAHR Docket No.: 20-004317  
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 August 6, 2020. [REDACTED]n, the Petitioner, appeared on her own behalf. The Department of Health and Human Services contracted Medicaid Health Plan (MHP), McLaren Health Plan, was represented by Melissa Sweet, Appeals Coordinator.

During the hearing proceeding, the MHP's documentation was admitted as Exhibits A-I and Petitioner's Hearing Request was admitted as Exhibit 1.

**ISSUE**

Did the Medicaid Health Plan properly deny Petitioner's request for panniculectomy?

**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] 1973. (Exhibit A)
3. On February 18, 2020, the MHP received a request for panniculectomy for Petitioner. Petitioner had a gastric bypass in 2018 and lost over 100 pounds. Petitioner's weight had been stable within 10 pounds for one year. Petitioner denied difficulty with daily activities or exercise, back pain, or rashes. (Exhibit E)

4. On March 2, 2020, the MHP issued a written notice that the prior authorization request for panniculectomy for Petitioner was denied because the documentation provided did not demonstrate a skin rash or ulcerations under the excess skin that has not responded to treatment. (Exhibit F)
5. On March 24, 2020, the MHP received an internal appeal request. (Exhibit A)
6. On April 13, 2020, a medical necessity review was completed by a specialty physician reviewer who found that the overall coverage criteria were not met, therefore, the requested procedure was not medically necessary. (Exhibit H)
7. On April 7, 2020, the MHP issued a Notice of Internal Appeal Decision-Denial, upholding the denial of the requested panniculectomy. The available documentation did not include photos to demonstrate the panniculus and did not report skin ulcerations or infection unresponsive to at least 6 months of treatment. (Exhibit I)
8. On July 14, 2020, the Michigan Office of Administrative Hearings and Rules received Petitioner's request for an administrative hearing. (Exhibit 1)

### **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,  
April 1, 2020, p. 1.

Petitioner is seeking coverage of panniculectomy.

The practitioner chapter of the MPM addresses surgery:

## **SECTION 11 – SURGERY – GENERAL**

Medicaid covers medically necessary surgical procedures.

MPM, Dental Chapter,  
April 1, 2020, p. 46

The MHP utilized the MAHP Guidelines for Panniculectomy/Abdominoplasty:

### **CRITERIA:**

Abdominoplasty and Panniculectomy are medically necessary when ALL of the following criteria are met:

- Panniculus hangs below the level of the symphysis pubis, as demonstrated in the medical record or pre-operative photographs.
- Medical documentation must show a stable weight for a minimum of 6 months post bariatric surgery or weight loss program.

- The Member's medical record must show documentation of ulcerations or infections (bacterial or fungal) unresponsive to at least six months of conservative management by a physician or infectious disease specialist. Photographic documentation (frontal and lateral views) may be requested showing the presence of chronic skin changes.
- The procedure must be ordered and performed by a plan-affiliated or contracted general or plastic surgeon. It must be performed at an affiliated or contracted facility.
- Must reference benefit plan.
- Medical Director review is required.

(Exhibit G)

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 develop prior authorization requirements and utilization management and review criteria that differ from Medicaid requirements. The MAHP Guidelines for Panniculectomy/Abdominoplasty 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 MAHP Guidelines for Panniculectomy/Abdominoplasty for the requested panniculectomy. The Appeals Coordinator explained that the medical documentation submitted did not show that all of the criteria were met. The documentation did not contain photographs of the panniculus or indicate there were skin ulcerations or infection unresponsive to at least six months of treatment. (Exhibit I; Appeals Coordinator Testimony) However, it is noted that the MAHP Guidelines for Panniculectomy/Abdominoplasty criteria requires either pre-operative photographs or medical records demonstrating that the panniculus hangs below the level of the symphysis pubis. (Exhibit G) In this case, the assessment/plan portion of the January 9, 2020, consultation record states that Petitioner "has an abdominal pannus which overhangs her symphysis pubis." (Exhibits A and E)

Petitioner acknowledged that she did not have skin ulcerations or infections. Petitioner explained that she cleans the area multiple times a day so that she does not get sores and she is not uncomfortable. Petitioner feels it is not fair and she is being penalized for taking the initiative to take care of herself and prevent sores. Petitioner stated that the skin is causing severe depression issues and thoughts of self-mutilation. It is frustrating that she lost over 100 pounds and now she has this baggy skin that gets in the way, is uncomfortable, and hurts when she tries to work out. Petitioner has never had self-mutilation thoughts before this. Petitioner provided a letter from her counselor supporting her request for panniculectomy. (Exhibit 1; Petitioner Testimony)

Petitioner bears the burden of proving by a preponderance of the evidence that the MHP erred in denying her request for panniculectomy. Petitioner has not met this burden based on the documentation submitted to the MHP for this prior authorization request. It was uncontested that Petitioner does not have ulcerations or infections unresponsive to at least six months of treatment. Therefore, the submitted documentation does not establish that Petitioner met the MAHP Guidelines for Panniculectomy/Abdominoplasty criteria. The criteria the MHP utilized do not consider mental health issues, such as the depression and thoughts of self-mutilation due to the excess skin Petitioner described. It also appears that the medical records submitted to the MHP did not document these issues. Further, the June 29, 2020, letter from Petitioner's counselor was submitted with the request for an administrative hearing. Therefore, this was not information available to the MHP to review at the time of the determinations at issue for this appeal. Accordingly, the MHP's denial of the February 18, 2020, prior authorization request for panniculectomy is upheld based on the information available at that time.

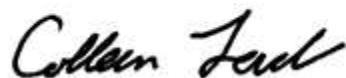
### **DECISION AND ORDER**

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 panniculectomy based on the available information.

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

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

CL/dh



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**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

**Petitioner**

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

**Community Health Rep**

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