

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 [REDACTED]

Date Mailed: May 5, 2021
MOAHR Docket No.: 21-001612
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 May 4, 2021. Petitioner, [REDACTED], appeared and represented herself. Respondent, Priority Health, had Holly Johnson, Senior Appeals Coordinator, appear as its representative. Neither party had any additional witnesses.

One exhibit was admitted into evidence during the hearing. A 117-page packet of documents provided by Respondent was admitted collectively as Respondent's Exhibit A.

ISSUE

Whether Priority Health properly denied Petitioner's request for bariatric 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 uses medical marijuana to alleviate pain.
2. Petitioner has possessed a medical marijuana card issued by the state of Michigan since at least August 8, 2019.
3. Petitioner is a Medicaid beneficiary, and Respondent provides her Medicaid benefits.
4. Respondent has a policy that sets the criteria that must be met for bariatric surgery to be approved, and one criterion is that there must not be any "substance abuse including alcohol and other drugs of abuse." The policy

includes a note that says, "for members who have a history of illegal drug use, there must be documented compliance with abstinence, including negative monthly urine drug screens for at least six continuous months."

5. On October 31, 2020, Petitioner's surgeon, Dr. Bushman, requested prior authorization from Respondent to perform bariatric surgery on Petitioner.
6. Respondent reviewed the prior authorization request and Petitioner's medical records, and Respondent determined that Petitioner did not meet one criterion for bariatric surgery. Respondent determined that Petitioner did not meet the criterion because she did not provide proof of six months of negative drug screens. Respondent determined that Petitioner was required to provide proof of six months of negative drug screens because she had a history of illegal drug use. Respondent determined that Petitioner had a history of illegal drug use because Petitioner admitted to using marijuana.
7. On November 30, 2020, Respondent denied Petitioner's request for bariatric surgery.
8. On December 3, 2020, Petitioner's surgeon, Dr. Bushman, requested prior authorization from Respondent again to perform bariatric surgery on Petitioner.
9. Respondent reviewed the prior authorization request and Petitioner's medical records, and Respondent determined that Petitioner did not meet one criterion for bariatric surgery. Respondent determined that Petitioner did not meet the criterion because she did not provide proof of six months of negative drug screens. Respondent determined that Petitioner was required to provide proof of six months of negative drug screens because she had a history of illegal drug use. Respondent determined that Petitioner had a history of illegal drug use because Petitioner admitted to using marijuana.
10. On December 8, 2020, Respondent denied Petitioner's request for bariatric surgery.
11. On January 4, 2021, Petitioner requested an internal review of Respondent's decision to deny her request for bariatric surgery.
12. On January 19, 2021, Respondent reviewed the denial and upheld it.
13. On April 13, 2021, Petitioner requested a hearing.

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 bariatric surgery because it determined that Petitioner had a history of drug abuse, and she did not provide proof of six months of negative drug screens as required by Respondent's policy. Petitioner does not dispute that she did not provide proof of six months of negative drug screens. However, Petitioner asserts that she should not be denied bariatric surgery simply because she uses medical marijuana.

Medical marijuana is authorized by the Michigan Medical Marihuana Act (MMMA). The MMMA provides protections for qualifying patients who use medical marijuana under the authority of the MMMA. Specifically, the MMMA states, "a qualifying patient who has been issued and possesses a registry identification card is not subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including, but not limited to, civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for the medical use of marihuana in accordance with this act . . ." MCL 333.26424(a). The protections for qualifying patients must be given the broadest application possible because of the use of "in any manner" in the statute. *Braska v Challenge Mfg Co*, 307 Mich App 340, 358; 861 NW2d 289 (2014).

Petitioner was using medical marijuana under the authority of the MMMA, and Respondent denied Petitioner's bariatric surgery because of her marijuana use. As a Medicaid benefit provided by Respondent, Petitioner would have been entitled to bariatric surgery if not for her medical marijuana use. Since Petitioner was using medical marijuana under the authority of the MMMA, Petitioner was entitled to the protections for qualifying patients provided by the MMMA, and those protections prohibited Respondent from denying her a right or privilege. When given the broadest application possible, the MMMA prohibited Respondent from denying Petitioner's bariatric surgery for her medical marijuana use. Thus, Respondent did not properly deny Petitioner's request for bariatric 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 bariatric surgery.

IT IS ORDERED Priority Health's decision is **REVERSED**. Priority Health shall begin to implement this decision within 10 days.

JK/dh



Jeffrey Kemm
Administrative Law Judge

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

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Community Health Rep

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