

GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: November 17, 2021
MOAHR Docket No.: 21-004728
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 November 10, 2021. Petitioner appeared on her own behalf. Katie Feher, Senior Manager of Operations and Appeals, appeared on behalf of Respondent, Meridian Health Plan (Department). Dr. Angela Porter, Interim Chief Medical Officer, appeared as a witness for Department.

Exhibits:

Petitioner	None
Department	A – Hearing Summary

ISSUE

Did the Department properly deny Petitioner's request for panniculectomy/abdominoplasty?

FINDINGS OF FACT

Based on the competent, material, and substantial evidence presented, the Administrative Law Judge finds as material fact:

1. Petitioner is a Medicaid beneficiary, born [REDACTED] 1963. (Exhibit A, p 13; Testimony)
2. On August 16, 2021, Department received from Petitioner, a request for a Abdominoplasty/Panniculectomy. (Exhibit A, pp 10,13-23; Testimony)
3. On August 27, 2021, the Department sent Petitioner a Notice of Adverse Benefit Determination. The notice indicated Petitioner's request for a panniculectomy had been denied by Respondent's physician reviewer. The determination specifically noted:

The notes sent to us did not show:

- Records showing that the lower stomach skin tissue is the cause of your chronic skin rash and one of the following:
 - Returns over 6 months while getting proper care
 - Skin conditions remains over 6 months, in spite of treatment and care of a skin doctor
 - You have been seen by a skin doctor¹

4. On September 3, 2021, Respondent, received from Petitioner, an internal appeal request. (Exhibit A, pp 36-41; Testimony)
5. On September 30, 2021, Respondent sent Petitioner a Notice of Internal Appeal Decision. The notice indicated Petitioner's internal appeal was being denied. The notice specifically stated:

We received a request for a surgery to remove extra skin of your stomach (panniculectomy). The notes show you had a surgery to help you lose weight (bariatric surgery) in 2017. The notes show you lost more than 130 pounds since your surgery. The notes show you have had problems with rashes in the extra skin of your stomach (pannus). Per the Michigan Centene Medical Policy .510 Abdominoplasty, Panniculectomy, Suction Lipectomy, and Lipoabdominoplasty, the notes must show:

- Photos that show your stomach hangs below your groin (pubis)
- Doctor's notes show this surgery is needed to help with the healing of a wound with another surgery of your stomach
- Doctor's notes showed that you did not respond to therapy for rash for six months

The notes did not show this. Therefore, the request remains denied.²

6. On October 12, 2021, the Michigan Office of Administrative Hearings and Rules, received from Petitioner, a request for hearing. (Exhibit A, pp 3-5.)

¹ Exhibit A, pp 25-26.

² Exhibit A, pp 43-44.

CONCLUSIONS OF LAW

The Medical Assistance Program 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 MHPs.

The Department 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 Community Health (MDCH) 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 MDCH 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.³

³ Medicaid Provider Manual, Medicaid Health Plan Chapter, January 1, 2020, p 1.

As allowed by the above policy and its contract with the Department, the MHP has developed prior authorization requirements and utilization management and review criteria. In particular, as testified to by Respondent's representative and established by its exhibit (Exhibit A, pp 53-57), Respondent's Medical Policy with respect to panniculectomy/abdominoplasty states in part:

The following guidelines address MHP coverage for procedures performed to either remove, tighten or repair excess skin and/or subcutaneous tissue in the truncal region. According to the American Society of Plastic and Reconstructive Surgeons, the specialty of plastic surgery includes reconstructive and cosmetic procedures:

1. Reconstructive surgery is performed on abnormal structures of the body, caused by congenital defects, developmental abnormalities, trauma, infection, tumors, involutional defects, or disease. It is generally performed to improve function, but may also be done to approximate a normal appearance.
2. Cosmetic surgery is primarily performed to reshape normal structures of the body to improve the patient's appearance and self-esteem, with little to no impact on function.

Panniculectomy is a surgical procedure to remove an abdominal pannus or panniculus. A panniculus is formed secondary to obesity when there is a dense layer of fatty tissue growth on the abdomen that becomes large enough to hang down from the body. Panniculus size varies from grade 1, which reaches the mons pubis, to grade 5, which extends to or reaches past the knees.

Abdominoplasty is a surgical procedure that tightens the lax anterior abdominal wall muscles and trims excess adipose tissue and skin. Panniculectomy differs from abdominoplasty in the sense that abdominoplasty is usually performed as a cosmetic procedure to improve appearance but not function.

- I. It is the policy of MeridianHealth that a Panniculectomy or Abdominoplasty is medically necessary for the following indications:

A. Panniculectomy: The panniculus hangs below the level of the pubis, documented by photographs and one of the following:

- i. The member's treating physician must document that the panniculus causes chronic intertrigo (dermatitis occurring on opposed surfaces of the skin, skin irritation, infection or chafing) that consistently recurs over 6 months while receiving appropriate medical therapy, or remains refractory to appropriate medical therapy over a period of 3 months.
- ii. Excision of excessive skin and subcutaneous tissue (including Lipectomy) of the abdomen (Abdominoplasty) (15830) will only be considered reasonable and medically necessary when these procedures are performed in conjunction with an abdominal surgery being done at the same time and allowing the tissue to remain would affect the healing of the surgical incision.
- iii. This procedure may also be considered to be medically necessary for the patient that has had a significant weight-loss following the treatment of morbid obesity and there are medical complications such as candidiasis, intertrigo or tissue necrosis that is unresponsive to oral or topical medication or physical aids.
 - a. If the procedure is being performed for intertrigo, consultation with a dermatologist must be present.
- iv. If the procedure is being performed following significant weight loss, in addition to meeting the criteria noted above, there should be evidence that the individual has maintained a stable weight for at least six months.
- v. If the weight loss has occurred as a result of bariatric surgery, Abdominoplasty/Panniculectomy should not be performed until at least 18 months after bariatric surgery and only when weight has been stable for at least the most recent six months.

B. Abdominoplasty: Excision of excessive skin and subcutaneous tissue (including lipectomy of the

abdomen) is medically necessary according to the following criteria:

- i. When these procedures are performed in conjunction with an abdominal surgery being done at the same time and allowing the tissue to remain would affect the healing of the surgical incision.
- ii. This procedure may also be considered to be medically necessary for the patient that has had a significant weight-loss following the treatment of morbid obesity and there are medical complications such as candidiasis, intertrigo or tissue necrosis that is unresponsive to oral or topical medication or physical aids that consistently recurs over 6 months while receiving appropriate medical therapy, or remains refractory to appropriate medical therapy over a period of 3 months.
 - a. If the procedure is being performed for intertrigo, consultation with a dermatologist must be present.

C. Suction Lipectomy/Lipoabdominoplasty:

- i. Meridian considers suction lipectomy and lipoabdominoplasty to be cosmetic in nature because they are not associated with functional improvements. Therefore, they are not medically necessary.⁴

The Department's witnesses testified the requested surgery was not covered under the criteria found in their Michigan Centene Medical Policy .510. The witnesses specifically indicated that the information submitted did not show that Petitioner met any of the criteria as outlined in the policy.

Petitioner argued she met the criteria and did not know why the requesting physician did not include copies of the photos that were taken. Petitioner however did not provide any evidence to indicate the information being requested was ever provided.

As indicated during the hearing, the Department can only render a decision based upon the information provided to them and that the Petitioner can always have her physician submit a new prior authorization.

⁴ Exhibit A, pp 53-54.

Based on the evidence presented, Petitioner has failed to satisfy the burden of proving by a preponderance of the evidence that the Department improperly denied Petitioner's request. Therefore, the Department's denial must be affirmed.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, the Administrative Law Judge finds that the Department's denial of Petitioner's request was proper.

IT IS THEREFORE ORDERED that:

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

CA/dh

J. Arendt
Corey Arendt
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

Petitioner

[REDACTED]
[REDACTED]
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Community Health Rep

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