[redacted]
[redacted]
[redacted], MI [redacted]

Date Mailed: November 24, 2021
MOAHR Docket No.: 21-004900
Agency No.: [redacted]
Petitioner: [redacted]

ADMINISTRATIVE LAW JUDGE: Robert J. Meade

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, 42 CFR 431.200 *et seq*. and 42 CFR 438.400 *et seq*. upon Petitioner's request for a hearing.

After due notice, a telephone hearing was held on November 18, 2021. [redacted], Petitioner, appeared and testified on her own behalf. Ro'Vida Brooks, Appeals and Grievances, appeared on behalf of Molina Healthcare, the Respondent Medicaid Health Plan (MHP). Dr. Keith Tarter, Senior Medical Director, appeared as a witness for the MHP.

Following the hearing, the record was left open until November 23, 2021 for Petitioner to submit additional documentation. That documentation was timely received and accepted into the record as Exhibit 1. Respondent's hearing summary was accepted as Exhibit A.

ISSUE

Did the MHP properly deny 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 is a [redacted]-year-old Medicaid beneficiary, born [redacted], who is enrolled in the Respondent MHP. (Exhibit A, p 9; Testimony).

2. On April 21, 2021, the MHP received a prior authorization request submitted on Petitioner's behalf asking for bariatric surgery. (Exhibit A, pp 10-120; Testimony).

3. On May 3, 2021, the MHP received duplicate prior authorization requests, with the same attachments, from Petitioner's provider. (Exhibit A, pp 121-346; Testimony)

4. On May 11, 2021, the MHP sent Petitioner written notice that the prior authorization request was denied for failure to meet Michigan Association of Health Plans (MAHP) Bariatric Surgery Guidelines for Coverage. The notice indicated, in part, "The notes sent in show that you have the condition of obesity. A request was received for weight loss surgery. This does not meet criteria. The notes show that you have had a previous weight loss surgery. Per the criteria, members shall have only one surgery for weight loss per lifetime. Therefore, the requested weight loss surgery is denied." (Exhibit A, pp 350-356; Testimony).

5. On October 5, 2021, the Michigan Office of Administrative Hearings and Rules (MOAHR) received Petitioner's request for hearing. (Exhibit A, p 3; Testimony).[1]

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.

In 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 (MHP).

The Respondent is the contractor for 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.

[1] Petitioner indicated at the hearing that her request for hearing was actually 10 pages in length, including attachments. However, MOAHR only had record of receiving one page. Petitioner was given until November 23, 2021 to submit the additional pages, which she did.

> 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.
>
> *Medicaid Provider Manual*
> *Medicaid Health Plan Chapter*
> *April 1, 2021, p 1*
> *Emphasis added*

Pursuant to the above policy and its contract with the Department, the MHP has developed prior authorization requirements and utilization management and review criteria. With respect to bariatric surgery, the MHP uses the MAHP Bariatric Surgery Guidelines for Coverage, which provides, in part, as follows:

> **Description:**
>
> Surgery for morbid obesity is an alternative to traditional weight loss methods when such methods have failed to yield sufficient weight loss in Members who are at great risk of complication due to their obesity.
>
> **Criteria:**
>
> Members may receive surgical intervention for obesity when the following criteria are met:
>
> 1. Must be at least 18 years of age
> 2. BMI >35 and two life endangering co-morbidities.
>
> Co-morbidities include but not limited to:
>
> - Poorly controlled diabetes mellitus.
> - Symptomatic sleep apnea not controlled by C-Pap.

- Severe cardio-pulmonary condition
- Hypertension inadequately controlled with optimal conventional treatment
- Uncontrolled Hyperlipidemia not amenable to optimal conventional treatment

3. BMI > 40 with or without co-morbid conditions.

4. Prior authorization by the Medical Director based on the following criteria and subject to providers as authorized by Plan.

5. Physician documented successful participation in a physician supervised weight loss program involving a weight loss diet, exercise and behavioral modification for a minimum of one (1) year, performed within the last two (2) years. Successful participation is determined at a minimum by documented regular attendance (at least monthly) and demonstration of consistent weight loss. The weight loss program must be medically supervised and provided by a plan provider. A physician's summary letter will not be considered sufficient documentation. The documentation must include medical records/clinical notes of the member's progress throughout the course of the weight loss program.

6. *The weight loss program must be medically supervised and provided by a plan provider and available and accessible to members. Members will be covered for all medical services but not for food supplements. All medical services related to the program including laboratory, EKGs, physician office visits, psychological testing will be covered with applicable co-payments and/or deductibles required under the certificate. The facility must utilize a multidisciplinary approach, including but not limited to: involvement of a physician with a special interest in obesity, a dietitian, a social worker (MSW), psychologist or psychiatrist interested in behavioral modification and eating disorders. Plans should have pre and post surgical support both available and*

accessible with coverage clearly stated to its members.

7. A psychological evaluation must be performed by a licensed independent behavioral specialist prior to surgery in order to establish the member's emotional stability and ability to comply with post-surgical limitations.

8. Requires referral by primary care physician to a multidisciplinary team.

9. The member must receive treatment at a facility utilizing a multidisciplinary approach, involving a physician with a special interest in obesity, a dietician, a psychologist or psychiatrist interested in behavior modification and eating disorders, and a surgeon with experience in all aspects of bariatric procedures.

10. Long term behavioral modification support and lifelong medical surveillance after surgical therapy is a necessity.

11. Member has undergone medical evaluation to rule out other treatable causes of morbid obesity.

12. A member shall only have one bariatric surgical procedure per lifetime unless medically necessary complication to correct or reverse a previous bariatric procedure from complications.

Exclusion:

1. Those procedures that lack evidence-based medicine to support the long term safety and efficacy

2. Members with one or more of the following conditions: Active substance abuse, defined non-compliance with previous medical care, terminal disease, pregnancy, or severe psychopathology.

(Emphasis added)
(**Bold and *italicized* emphasis in original**)
(Exhibit A, pp 357-360)

Here, the notice of denial and the MHP's witness testimony both provide that Petitioner's request for bariatric surgery was denied pursuant to the above policies.

Specifically, the MHP's witness indicated that Petitioner's request for bariatric surgery was denied because she had a previous bariatric surgery (lap band placement). The MHP's witness indicated that only one bariatric surgical procedure is allowed per lifetime unless the second surgery is medically necessary to correct or reverse a previous procedure from complications. Here, the MHP witness indicated that there was nothing in the medical records submitted with Petitioner's prior authorization request indicating that there had been complications with the lap band.

Petitioner testified that when she first received the lap band it was not done by a bariatric surgeon, so it should not count as a prior bariatric surgery. Petitioner indicated that her current bariatric surgeon informed her that a lap band was not even considered bariatric surgery when she had hers placed. Petitioner testified that she did not want a lap band at the time but was talked into it by the doctor who told her it was a less invasive procedure.

Petitioner also testified that she is having complications from the lap band. Petitioner indicated that she cannot lay on her stomach or her back and her current doctor saw abrasions around the lap band during a recent laparoscope. Petitioner also testified that she is having issues with her hemoglobin levels and bone marrow, and she believes it may be related to the lap band. Petitioner testified that her cardiologist has recommended this surgery and says it will be beneficial to her health. Petitioner indicated that she also regurgitates everything that she eats currently because of the lap band. Petitioner also pointed out that she never went through all the pre-steps for bariatric surgery (which she has gone through now) before getting the lap band. Petitioner said it was a shame that she spent two years preparing for this bariatric surgery only to be told at the last minute that it was not approved.

Petitioner bears the burden of proving by a preponderance of the evidence that the MHP erred in denying her prior authorization request.

Given the record in this case, the undersigned Administrative Law Judge finds that Petitioner has failed to meet that burden of proof and that the MHP's decision must therefore be affirmed. The MHP is permitted by Department policy and its contract to develop review criteria; it has done so; and, pursuant to the applicable review criteria, Petitioner clearly does not meet the requirements for bariatric surgery because she has had a previous bariatric procedure. While Petitioner argues that the placement of the lap band was not a bariatric procedure, Molina's Medical Director indicated that it was a medical procedure, and even a cursory internet search confirms that placement of a lap band is a bariatric surgery.[2] Furthermore, while Petitioner may be having complications with the lap band, none of the medical evidence submitted with her prior authorization request indicates any problems or complications with the lap band. Lastly, the additional evidence submitted by Petitioner after the hearing is not controlling because the MHP did have that information when it made the decision that led to the denial in this case. The undersigned can only determine if the MHP's decision was proper at the

[2] See Lap-Band Surgery | Mount Sinai South Nassau (https://www.southnassau.org/sn/lapband?srcaud=Main)

time it was made, based on the information available at that time. While the undersigned can certainly empathize with Petitioner's situation, the undersigned has no equitable authority and no authority to ignore clear policy. As such, the MHP's decision must be upheld. See *Huron Behavioral Health v Department of Community Health*, 293 Mich App 491 (2011). See also Delegation of Authority, October 30, 2020, https://www.michigan.gov/documents/mdch/ADMN_HEARING_PAMPHLET_MARCH_2008_227657_7.pdf.

As Molina's Medical Director indicated at the hearing though, Petitioner should immediately have her doctor submit the new medical documentation supporting complications with the current lap band as a reconsideration request.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the MHP properly denied the prior authorization request for bariatric surgery.

IT IS THEREFORE ORDERED that:

The Medicaid Health Plan's decision is AFFIRMED.

RM/sb

Robert J. Meade
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
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MDHHS-MCPD@michigan.gov

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