



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: December 7, 2022
MOAHR Docket No.: 22-004959
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 December 1, 2022. Petitioner appeared on her own behalf. John Lambert, Appeals Review Officer, appeared on behalf of the Respondent, the Department of Health and Human Services (Department). Dr. David Wartinger, Consultant, appeared as a witness for the Department.

Exhibits:

Petitioner	None
Department	A – Hearing Summary

ISSUE

Did the Department properly deny Petitioner’s prior authorization request for an abdominoplasty and mastopexy?

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 Medicaid beneficiary. (Exhibit A, pp 2, 7).
2. On October 18, 2022, the Department received a prior authorization request submitted on Petitioner’s behalf by Dr. Alan Stephens of Bronson Methodist Hospital seeking a bilateral mastopexy and abdominoplasty. (Exhibit A, pp 11, 14-38; Testimony).

3. The medical documentation submitted by Dr. Stephens indicated the requested procedures were cosmetic in nature. (Exhibit A, pp 14-38; Testimony).
4. On October 19, 2022, the Department sent Petitioner written notice that it had denied Petitioner's prior authorization request for medical services. (Exhibit A, pp 12-13).
5. In part, that notice of denial stated:

The policy this denial is based on is Section 8.3 of the General Information for providers chapter of the Medicaid Provider Manual. Specifically:

 - Based on the information reviewed, your request for mastopexy and abdominoplasty has been denied by Medicaid. Elective cosmetic surgery or procedures are not covered by the Medicaid program. The submitted surgical notes reinforce the cosmetic nature of the requested procedures.¹
6. On October 27, 2022, the Michigan Office of Administrative Hearings and Rules, received the request for hearing. (Exhibit A, pp 4-10).

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 statutes, the Social Welfare Act, the Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

Medicaid covered benefits are addressed for the practitioners and beneficiaries in the Medicaid Provider Manual (MPM) and, with respect to noncovered services, the applicable version of the MPM states in part:

8.3 NONCOVERED SERVICES

The items or services listed below are not covered by the Medicaid program:

- Acupuncture
- Autopsy

¹ Ex A, p 12.

- Biofeedback
- *All services or supplies that are not medically necessary*
- Experimental/investigational drugs, biological agents, procedures, devices or equipment
- Routine screening or testing, except as specified for EPSDT Program or by Medicaid policy
- *Elective cosmetic surgery or procedures . . .*²

Here, the Department denied Petitioner's prior authorization request as the medical documentation from Dr. Stephens, indicated the requested services were cosmetic in nature and did not indicate the services were medically necessary.

In response, Petitioner testified that the notes from her Nurse Practitioner, the provider who made the referral should be given more weight than the documentation provided by Dr. Stephens.

On rebuttal, Dr. Wartinger indicated the physician performing the procedure should be provided more weight simply because they are the one performing the operation. Dr. Wartinger went on to indicate the notes provided by Petitioner's Nurse Practitioner contained significant errors that call into question the credibility of the remaining notes provided by this provider.³

In this matter, the Petitioner bears the burden of proving by a preponderance of the evidence that the Department erred in denying the prior authorization request. Moreover, the undersigned Administrative Law Judge reviews the Department's decision in light of the information that was available at the time the decision was made.

Given the record in this case, Petitioner has failed to meet that burden of proof and the Department's decision must be affirmed. The prior authorization request and its supporting documentation do not identify the requested procedures as being medically necessary.

² MPM, General Information for Providers, October 1, 2022, p 23.

³ Notes reflect Petitioner underwent a gastric bypass.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, decides that the Department properly denied Petitioner's prior authorization request.

IT IS, THEREFORE, ORDERED that:

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

CA/vc



Corey Arendt
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

Via Electronic Mail:

DHHS Department Contact

Gretchen Backer
400 S. Pine, 6th Floor
Lansing, MI 48909

MDHHS-PRD-Hearings@michigan.gov

DHHS Department Representative

M. Carrier
Department Community Health
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John Lambert
MDHHS Appeals Section
PO Box 30807
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Via First Class Mail:

Petitioner

[REDACTED]
[REDACTED] MI [REDACTED]