GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
SUZANNE SONNEBORN
EXECUTIVE DIRECTOR

MARLON I. BROWN, DPA
DIRECTOR

[redacted]
[redacted] MI [redacted]

Date Mailed: March 7, 2024
MOAHR Docket No.: 24-001274
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 March 6, 2024. [redacted] Petitioner's mother and Authorized Hearing Representative (AHR), appeared and testified on Petitioner's behalf. Petitioner, [redacted] appeared as a witness. Dr. Donald Beam, Medical Director, appeared on behalf of Blue Cross Complete, the Respondent Medicaid Health Plan (Respondent or MHP). Benita Tipton, Appeals Manager, appeared as a witness for the MHP.

ISSUE

Did the MHP properly deny Petitioner's prior authorization request for Mastopexy and Brachioplasty?

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 who is enrolled in Respondent's MHP. (Exhibit A; Testimony)

2. On December 20, 2023, Petitioner's physician submitted a prior authorization request for Mastopexy and Brachioplasty. (Exhibits B, D, E; Testimony)

3. On December 25, 2023, Respondent sent Petitioner a Notice of Adverse Benefit Determination because the prior authorization request did not

meet the criteria for coverage. Specifically, the Notice indicated, "This request is denied completely because: Your doctor asked us to approve surgery to improve the appearance of your breasts and arms (Mastopexy and brachioplasty). You are [redacted] years old. You do not have a problem that you were born with (congenital defect). You do not have trouble with your development (developmental abnormality). You did not have trauma to the area (trauma, burns). You did not have an (infection). You did not have cancer (tumors). We cannot approve a surgery to make you look better (cosmetic surgery). Inpatient level of care is denied. It is not medically necessary. Please speak to your doctor if you have questions. (We used Clinical Policy ID: CCP.1184; Cosmetic and plastic reconstructive surgery in making this decision)." (Exhibit F; Testimony)

4. On January 4, 2024, Petitioner requested an internal appeal. (Exhibit H; Testimony)

5. On January 11, 2024, Respondent sent Petitioner's provider a request for any additional medical documentation the provider wished Respondent to consider. (Exhibit K; Testimony)

6. On January 25, 2024, Respondent sent Petitioner a Notice of Appeal Denial, which indicated, in part: "Blue Cross Complete denied your appeal because You are [redacted] years old. You have lost a lot of weight. Your doctor wants to treat you with surgery to improve the appearance of your breasts and arms (Mastopexy and brachioplasty). We do not have data that you got medicines to treat skin swelling (intertrigo). Photos do not show skin swelling. You do not have a problem that you were born with (congenital defect). You do not have trouble with your development (developmental abnormality). You did not have trauma to the area (trauma, burns). You did not have an (infection). You did not have cancer (tumors). We cannot approve a surgery to make you look better (cosmetic surgery). The request remains denied. Please talk to your doctor if you have questions. Blue Cross Complete of Michigan Clinical Policy ID: CCP.1184 Cosmetic and plastic reconstructive surgery criteria was used in making this decision. (Exhibit O); Testimony)

7. On February 12, 2024, the Michigan Office of Administrative Hearings and Rules (MOAHR) received Petitioner's request for hearing. (Exhibit 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.

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 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.
>
> *Medicaid Provider Manual*
> *Medicaid Health Plan Chapter*
> *October 1, 2023, p 1*
> *Emphasis added*

Pursuant to the above policy and its contract with the Department, the MHP has developed a prior authorization process subject to the limitations and restrictions described in the MHP's Medicaid agreement, the MPM, Medicaid bulletins, and other directives.

With regard to Mastopexy and Brachioplasty, MHP policy provides:

> The purpose of this policy is to supplement coverage guidance for plastic surgical procedures with cosmetic aspects that may not be contained in a separate clinical policy.
>
> Plastic, also known as reconstructive surgery is clinically proven and, therefore, medically necessary when both of the following criteria are met:
>
> - The need for the surgical procedure is clinically proven.
> - The goal of surgery is to correct a functional impairment of a body area caused by a congenital defect, developmental abnormality, trauma, burns, infection, tumors, or disease.
>
> Limitations
>
> Surgery performed to improve body appearance in the absence of a functional impairment is considered cosmetic and, therefore, not medically necessary.
>
> All requests for coverage of plastic surgery of a non-Medicare member require prior review by a Medical Director on a case-by-case basis, except for those procedures addressed in another clinical policy or required by state or federal authorities.
>
> (Exhibit L; Emphasis added)

Respondent's Medical Director reviewed the history of Petitioner's case, the criteria used in the determination, and the rationale for the denial of Petitioner's request.

Petitioner's AHR testified that since her weight loss, Petitioner is getting rashes under her breasts, problems with her back, and a bad odor, especially during the summer.

Petitioner testified that she had bariatric surgery in 2022 and lost over [redacted] pounds, resulting in a loss of all volume in her breasts and arms. Petitioner indicated that those areas have been irritated since then. Petitioner noted that she did have an abdominoplasty (tummy tuck) in September 2023. Petitioner indicated that her complaints regarding the irritation are part of her medical records as she was given a powder and a cream to deal with the issues.

Given the above policy and evidence, Petitioner has failed to prove by a preponderance of the evidence that the MHP erred in denying the prior authorization request. Policy clearly indicates that Respondent is authorized to develop prior authorization requirements and policies that are consistent with Medicaid policy. Here, the policy provides that cosmetic surgery is only covered when:

- The need for the surgical procedure is clinically proven.
- The goal of surgery is to correct a functional impairment of a body area caused by a congenital defect, developmental abnormality, trauma, burns, infection, tumors, or disease.

Policy also provides that:

> Surgery performed to improve body appearance in the absence of a functional impairment is considered cosmetic and, therefore, not medically necessary.

(Exhibit L; Emphasis added)

Here, the medical documentation submitted with the prior authorization request does not show that Petitioner suffers from skin swelling (intertrigo), and photos submitted with the request do not show skin swelling. The documentation also does not show that Petitioner was born with a congenital defect or a developmental abnormality, that there was trauma to the area, an infection, or tumors. As such, the requested surgery would be considered cosmetic in nature and was properly denied by the MHP. While Petitioner is being medically treated for the irritation under her breasts and arms, there is no mention of this in the medical records provided with the prior authorization request. The undersigned would suggest that Petitioner review this decision with her provider and, if applicable, submit another prior authorization request showing that the surgery meets the above criteria, i.e., is needed to treat an infection or a disease.

While the undersigned is sympathetic to Petitioner's position, he has no authority to ignore clear Medicaid policy or to grant Petitioner any relief in this matter.

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 prior authorization for Mastopexy and Brachioplasty.

IT IS THEREFORE ORDERED that:

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

RM/pe

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

Via Electronic Mail:

Petitioner

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

Community Health Representative
Blue Cross Complete of Michigan
4000 Town Center, Ste. 300
Southfield, MI 48075
BCCMISFH@mibluecrosscomplete.com

DHHS Department Contact
MDHHS Managed Care Plan Division
400 S Pine St., 7th Floor
Lansing, MI 48933
MDHHS-MCPD@michigan.gov

Via First Class Mail:

Authorized Hearing Representative

[redacted]
[redacted] MI [redacted]