



GRETCHEN WHITMER
GOVERNOR

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

MARLON BROWN
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: September 26, 2024
MOAHR Docket No.: 24-008499
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Steven Kibit

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and upon a request for a hearing.

After due notice, a telephone hearing was held on September 4, 2024. Petitioner [REDACTED] (Petitioner) appeared and testified on her own behalf. Cassandra Moultrie, Supervisor of Appeals Department, appeared and testified on behalf of Respondent Blue Cross Complete of Michigan (Respondent). Dr. Donald Beam, Medical Director, also testified as a witness for Respondent.

During the hearing, Petitioner's request for hearing was admitted into the record without objection as Exhibit #1. Respondent also submitted fourteen proposed exhibits that were admitted into the record without objection as Exhibits A-N.

ISSUE

Did Respondent properly deny Petitioner's prior authorization request for a 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 a [REDACTED] year-old Medicaid beneficiary who is enrolled with Respondent, a Medicaid Health Plan (MHP). (Exhibit D, pages 1-6).
2. On May 6, 2024, Petitioner's provider submitted a prior authorization request on Petitioner's behalf to Respondent for approval of a mastopexy for Petitioner. (Exhibit D, pages 1-6).
3. A previous request had already been denied on the basis that it was a noncovered, cosmetic surgery. (Testimony of Petitioner).

4. In the documentation submitted along with the new request, the provider wrote in part:

[Petitioner] underwent of laparoscopic sleeve gastrectomy on 4/12/22. She has achieved a weight loss of [REDACTED] lbs as of her 3/12/24 visit from her highest weight of [REDACTED] lbs prior to her gastric sleeve surgery . . .

[Petitioner] has significant excess skin under her bilateral breast tissue and under her upper arms as a result of her significant weight loss. She struggles with recurrent skin candidiasis under her bilateral breasts and bilateral axila. She is using Nystatin cream and powder daily which is helping but she continues to develop recurrent rashes and now has hypopigmented skin in all areas. She also is struggling with upper back pain from her pendulous breast tissue. I believe excess skin resection surgery is medically necessary to resolve these issues.

Exhibit E, page 1

5. On May 7, 2024, Respondent sent Petitioner written notice that her prior authorization request was denied. (Exhibit F, pages 1-12).
6. With respect to the reason for the denial, the notice stated:

This request is denied completely because: Your doctor asked us on 5/7/2024 to approve breast surgery (mastopexy). You have significant weight loss. You are [REDACTED] years old. Your weight has not been stable for the last six months per the records sent. It is not clear from the records if you need skin removed in other areas for your symptoms. The request for mastopexy is denied. More information is necessary. Please talk to your doctor if you have questions. (We used InterQual (InterQual 2023, Mar. 2023 Release, CP:Procedures Breast Reconstruction) in making this decision.)

Exhibit F, page 3

7. On May 23, 2024, Petitioner filed an Internal Appeal with Respondent with respect to that denial. (Exhibit H, pages 1-2).

8. On June 7, 2024, Respondent sent Petitioner written notice that it had reviewed her Internal Appeal, and the original denial was being upheld. (Exhibit N, pages 1-12).
9. With respect to the reason for the denial, the notice stated:

Your appeal is denied. Blue Cross Complete denied your appeal because You are [REDACTED] years old. You have lost weight. You have excess skin. Your doctor wants to treat you with breast lift surgery (mastopexy). The surgery is not related to breast removal surgery (mastectomy or lumpectomy). The surgery is not to correct a condition you were born with (congenital disorder or condition). The surgery is not to correct severe breast deformity (disfigurement secondary to trauma or radiation). The request remains denied. Please talk to your doctor if you have questions. Criteria: InterQual 2023, Mar. 2023 Release, CP: Procedures Breast Reconstruction.

Exhibit N, page 3

10. On July 29, 2024, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the request for hearing filed by Petitioner in this matter with respect to that decision. (Exhibit #1, pages 1-2).

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.

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 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 review criteria that differ from Medicaid requirements. The following subsections describe covered services, excluded services, and prohibited services as set forth in the Contract.

* * *

1.3 SERVICES THAT MHPS ARE PROHIBITED FROM COVERING

- Elective therapeutic abortions and related services. Abortions and related services are covered when medically necessary to save the life of the mother or if the pregnancy is a result of rape or incest;
- Experimental/Investigational drugs, procedures or equipment;
- Elective cosmetic surgery; and
- Services for treatment of infertility.

*MPM, April 1, 2024 version
Medicaid Health Plan Chapter, page 1
(Underline added for emphasis)*

As allowed by the above policy and its contract with the Department, the MHP has chosen to use its own prior authorization requirements, utilization management, and review criteria. Specifically, as explained by Respondent's witness and demonstrated by its exhibits, Respondent uses InterQual guidelines when reviewing requests.

With respect to breast reconstruction surgery, InterQual criteria requires one of the following diagnoses for the surgery to be approved:

- Reconstruction during or post mastectomy
- Reconstruction with or without breast lift (mastopexy) during or post partial mastectomy or lumpectomy
- Reconstruction with or without breast lift (mastopexy) of contralateral breast during or post mastectomy
- Congenital disorder or condition causing severe breast disfigurement
- Reconstruction for severe breast disfigurement secondary to trauma or radiation

Exhibit L, page 1

Here, Respondent found that Petitioner did not have one of the identified diagnoses or any functional limitations, and that the prior authorization request was therefore denied as noncovered.

In appealing that decision, Petitioner has the burden of proving by a preponderance of the evidence that Respondent erred in denying her authorization request. Moreover, the undersigned Administrative Law Judge is limited to reviewing Respondent's decision in light of the information that was available at the time the decision was made.

Given the above policy and evidence in this case, Petitioner has failed to satisfy her burden of proof and Respondent's decision must be affirmed.

The documentation submitted along with the prior authorization request indicated that Petitioner needed excess skin resection surgery, but the request itself was for a breast lift. Respondent, as permitted by its contract and the MPM, has developed specific utilization review criteria consistent with all applicable published Medicaid coverage and limitation policies regarding surgeries on the breast like the one requested by Petitioner, and Petitioner undisputedly does not meet that required criteria given her identified diagnoses or conditions.

To the extent Petitioner has additional or updated information to provide, or she wants to clarify what is being requested, then Petitioner can always request services again in the future along with that information. With respect to the decision at issue in this case however, Respondent's decision must be affirmed given the available information and applicable policies.

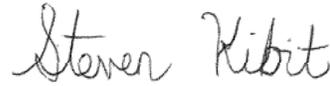
DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Respondent properly denied Petitioner's prior authorization request.

IT IS, THEREFORE, ORDERED that:

Respondent's decision is **AFFIRMED**.

SK/sj



Steven Kibit
Administrative Law Judge

NOTICE OF APPEAL: Petitioner 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

PROOF OF SERVICE

I certify that I served a copy of the foregoing document upon all parties, to their last known addresses in the manner specified below, this 26th day of September 2024.

S. James

S. James
**Michigan Office of Administrative
Hearings and Rules**

Via Electronic & First Class Mail:

Petitioner

[REDACTED]
[REDACTED] MI [REDACTED]
[REDACTED]

Via Electronic Mail:

Community Health Representative
AmeriHealth Caritas
100 Galleria Officentre
Southfield,, MI 48034
Acoltrain@amerihealthcaritasia.com

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
Lansing, MI 48933
MDHHS-MCPD@michigan.gov