



Date Mailed: March 3, 2025

Docket No.: 25-001960

Case No.:

Petitioner:



This is an important legal document. Please have someone translate the document.

هذه وثيقة قانونية مهمة. يرجى أن يكون هناك شخص ما يترجم المستند.

এটি একটি গুরুত্বপূর্ণ আইনি ডকুমেন্ট। দয়া করে কেউ দস্তাবেজ অনুবাদ করুন।

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这是一份重要的法律文件。请让别人翻译文件。

Ky është një dokument ligjor i rëndësishëm. Ju lutem, kini dikë ta përktheni dokumentin.

DECISION AND ORDER

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

After due notice, a telephone hearing was held on February 27, 2025. Petitioner appeared on her own behalf. Lana Karadsheh, Appeals Review Officer, appeared on behalf of the Respondent, the Michigan Department of Health and Human Services (Department). Dr. David Wartinger, a consultant physician; and Jacob Disley-Cielen testified as witnesses for the Department.

Exhibits:

Petitioner	None
Department	A – Hearing Summary

ISSUE

Did the Department properly deny Petitioner's prior authorization request for a left breast augmentation?

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 an enrolled Medicaid beneficiary. (Exhibit A.)

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2. In June of 2024, a biopsy revealed Petitioner had a malignancy in her left breast. (Exhibit A; Testimony.)
 3. On July 26, 2024, Petitioner underwent a left nipple mastectomy to remove the cancerous tissue. During the surgery, Petitioner had a non-approved surgery to her right breast. (Exhibit A; Testimony.)
 4. On September 18, 2024, the Department received a prior authorization completed on behalf of Petitioner seeking four reconstructive procedures for Petitioner's left breast and a breast augmentation for Petitioner's non affected right breast. (Exhibit A; Testimony.)
 5. On September 19, 2024, the Department sent Petitioner an approval and denial notice, approving the four procedures for Petitioner's left breast but denying the left breast augmentation. The reason for the denial was the procedure was deemed cosmetic in nature, and further, that the right breast was not subjected to cancer therapy in any form. (Exhibit A; Testimony.)
 6. On October 4, 2024, the Department received a second prior authorization completed on behalf of Petitioner seeking a right breast augmentation for Petitioner's non-affected right breast. (Exhibit A; Testimony.)
 7. On October 7, 2024, the Department sent Petitioner a Notification of Denial denying the October 4, 2024, request. The denial indicated the denial was the procedure was deemed cosmetic in nature and further that the right breast was not subject to cancer therapy in any form. (Exhibit A.)
 8. On January 15, 2025, the Michigan Office of Administrative Hearings and Rules received from Petitioner, a request for hearing. (Exhibit A.)

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 the delivery of 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:

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- Acupuncture
 - Autopsy
 - 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**
 - Charges for missed appointments
 - Infertility services or procedures for males or females, including reversal of sterilizations
 - Charges for time involved in completing necessary forms, claims, or reports

When the beneficiary needs a medical service recognized under State Law, but not covered by Medicaid, the service provider and the beneficiary must make their own payment arrangements for that noncovered service. The beneficiary must be informed, prior to rendering of service, that Medicaid does not cover the service. A Medicaid beneficiary in a nursing facility can use his patient-pay funds to purchase noncovered services subject to MDHHS verification of medical necessity and the provider's usual and customary charge. (Refer to the Nursing Facility Chapter for additional information.)³

Moreover, regarding breast reconstruction surgery, the MPM further states:

12.2 BREAST RECONSTRUCTION SURGERY

Medicaid covers breast reconstruction surgery following the diagnosis and treatment of breast cancer. Covered services

³ MPM, General Information for Providers, January 1, 2024, p 24.

include procedures related to the affected and the contralateral unaffected breast following a medically necessary mastectomy. The prior authorization requirements for these specified breast reconstruction procedure codes are waived when billed with appropriate ICD breast cancer diagnosis codes. The specified CPT codes subject to this PA waiver are identified in the Medicaid Code and Rate Reference tool. (Refer to the Directory Appendix for website information.)⁴

Here, as discussed above, Department denied Petitioner's request for a right breast augmentation after coming to the conclusion the request was an elective cosmetic surgery; and further, the requested procedure was to a non-affected organ, thus, not covered by the Medicaid Program.

Petitioner argued she would not have removed one breast if she knew they would both look different.

Policy is clear in that elective surgeries are not covered by Medicaid. Related to breast reconstruction, surgery policy does indicate Medicaid covers breast reconstruction surgery following the diagnosis and treatment of breast cancer. Covered services include procedures related to the affected AND the "contralateral unaffected breast" following a medically necessary mastectomy.

In this case, Petitioner is requesting services to a non-affected organ; and thus, does not meet MPM section 12.2 criteria and is further determined to be cosmetic in nature and thus, prohibited in accordance with section 11.1.

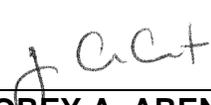
Given the record and applicable policy in this case, Petitioner has failed to meet her burden of proof; and the Department's decision must be affirmed.

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**.



COREY A. ARENDT
ADMINISTRATIVE LAW JUDGE

⁴ MPM, Practitioner, July 1, 2024, p 56.

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

