

████████████████████,

APPELLANT

v.

MARYLAND DEPARTMENT OF

HEALTH

* TRACEY JOHNS DELP,

* ADMINISTRATIVE LAW JUDGE

* THE MARYLAND OFFICE

* OF ADMINISTRATIVE HEARINGS

* OAH No.: MDH-MCP-012-20-25484

* * * * *

DECISION

STATEMENT OF THE CASE
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STATEMENT OF THE CASE

The Maryland Department of Health’s (Department or MDH) agent, Amerigroup Maryland, Inc. (Amerigroup), a Managed Care Organization (MCO),¹ arranges for the provision of health care services, on a managed care basis, to individuals enrolled in the Maryland Medical Assistance (MA) program.

After an unsuccessful internal appeal,² ██████████ (Appellant) filed a request for a Fair Hearing on November 9, 2020 because Amerigroup denied her preauthorization request for a panniculectomy and abdominoplasty. COMAR 10.01.04.02A(8); COMAR 10.67.09.05F. On November 19, 2020, the Department forwarded the hearing request to the OAH to conduct a hearing.

¹ “Managed care organization,” or MCO, means: “A certified health maintenance organization that is authorized to receive medical assistance prepaid capitation payments[.]” Md. Code Ann., Health Gen., 15-101(e)(1) (2019).

² MDH regulations, at Code of Maryland Regulations (COMAR) 10.67.09.05, provide informal resolution procedures for disputes between MCOs and MA Program enrollees and disputes between MCOs and providers. An MA Program enrollee must pursue informal resolution prior to filing a request for a hearing before the Office of Administrative Hearings (OAH). COMAR 10.67.09.05F.

On January 7, 2021, I held a remote video hearing from the OAH.³ COMAR 10.01.04.06; COMAR 28.02.01.20B(1). The Appellant was present and represented herself. [REDACTED], Esquire, represented Amerigroup. Preliminarily, the Appellant requested a postponement to gather more documentation from her physician; Amerigroup objected. COMAR 28.02.01.16 requires that I find good cause in order to grant a postponement. I denied the Appellant's postponement request because she failed to establish good cause. The Appellant could not articulate any barrier which prevented her from obtaining the information she sought since the date she filed her request for a Fair Hearing on November 9, 2020.

The Administrative Procedure Act, the Procedures for Fair Hearing Appeals under the MA Program, and the Rules of Procedure of the OAH govern the procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2020); COMAR 10.01.04; COMAR 28.02.01.

ISSUE

Did Amerigroup improperly deny the Appellant's preauthorization request for a panniculectomy and abdominoplasty?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted into evidence documents offered by the MCO as follows:

MCO Ex. 1 Notice of Remote Hearing, issued November 23, 2020, Bates Stamped (BS) [REDACTED]0001, with attached documents, listed as follows:

- Print date receipt, August 6, 2020, BS [REDACTED]0002
- Precertification request, August 5, 2020, BS [REDACTED]0003
- Case Notes, various dates, BS [REDACTED]0004 to [REDACTED]0014
- Clinical UM⁴ Guideline, Panniculectomy and Abdominoplasty, publish date May 9, 2019, BS [REDACTED]0015 to [REDACTED]0020

³ Remote video hearings are being conducted due to the COVID-19 pandemic.

⁴ This acronym was not defined.

- Letter from the MCO to the Appellant, August 10, 2020, BS [REDACTED]0021 to [REDACTED]0030
- Letter from the MCO to [REDACTED], M.D. (Dr. [REDACTED]), August 10, 2020, BS [REDACTED]0031 to [REDACTED]0037
- Letter from Dr [REDACTED] to the MCO, with attachments, September 17, 2020, BS [REDACTED]0038 to [REDACTED]0062
- Letter from the MCO to the Appellant, October 2, 2020, BS [REDACTED]0063 to [REDACTED]0071
- Letter from the MCO to Dr. [REDACTED], October 2, 2020, BS [REDACTED]0072 to [REDACTED]0080
- Email from the Appellant to the MCO, October 5, 2020, BS [REDACTED]0081
- Appeal Case Notes, various dates, BS [REDACTED]0082 to [REDACTED]0097
- [REDACTED] Case Report, undated, BS [REDACTED]0098 to [REDACTED]0101
- Letter from the MCO to the Appellant, October 16, 2020, BS [REDACTED]0102 to [REDACTED]0110
- Letter from the MCO to Dr. [REDACTED], October 16, 2020, BS [REDACTED]0111 to [REDACTED]0116
- COMAR 10.67.09.05, undated, BS [REDACTED]0117 to [REDACTED]0121

MCO Ex. 2 Fair Hearing Case Summary, undated

The Appellant did not offer any exhibits to be admitted into evidence.

Testimony

The Appellant testified in her behalf and presented the testimony of her husband, [REDACTED], and her mother-in-law, [REDACTED]. [REDACTED], Clinical Quality Program Manager, testified for Amerigroup.

FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. Amerigroup is an MCO that provides MA services in Maryland.
2. At all times relevant, the Appellant has qualified for MA, to include receiving health insurance through Amerigroup.
3. On August 5, 2020, Amerigroup received a request submitted by the Appellant's provider, Dr. [REDACTED], seeking preauthorization for the Appellant to receive a panniculectomy and abdominoplasty.

4. Amerigroup's Clinical UM Guideline for Panniculectomy and Abdominoplasty (Guideline #CG-Surg-99) is a nationally recognized medical standard.

5. Guideline #CG-Surg-99 is consistent with clinical practice standards and peer-reviewed literature established by the American Society of Plastic Surgeons.

6. The preauthorization request was reviewed by Amerigroup physician [REDACTED], M.D. who applied Guideline #CG-Surg-99 and concluded that the procedures were not medically necessary because the request lacked documentation of chronic rashes or infections (treatment and duration) as well as guideline-defined significant weight loss.

7. On August 10, 2020, Amerigroup notified the Appellant and Dr. [REDACTED] of its preauthorization denial.

8. On September 17, 2020, Dr. [REDACTED] filed an appeal of the denial. He submitted additional medical documentation in support of the appeal. The Appellant filed her written consent for the appeal on October 5, 2020.

9. Amerigroup forwarded the appeal to [REDACTED]⁵ specialty reviewer [REDACTED] M.D., who is board certified in plastic surgery. Dr. [REDACTED] applied Guideline #CG-Surg-99 and recommended upholding the initial denial, concluding that the procedure is not medically necessary because, *inter alia*, "there is no documentation of threat to health or function." (MCO Ex. 1, BS [REDACTED]0098.)

10. Amerigroup physician [REDACTED], M.D. reviewed Dr. [REDACTED]'s recommendation and concurred.

11. On October 16, 2020, Amerigroup notified the Appellant and Dr. [REDACTED] of its appeal determination.

⁵ [REDACTED] offers independent clinical review services.

DISCUSSION

Governing Regulations

“[A]n MCO shall provide its enrollees with a benefits package that includes the covered services specified in this chapter when these services are deemed to be medically necessary including services covered under the Maryland Medicaid State Plan in the amount, duration, and scope set forth in the State Plan and in accordance with 42 CFR § 440.230.”

COMAR 10.67.06.01A.

In accord with the above, the MA program’s controlling regulations further provide, in pertinent part,

The benefits or services not required to be provided by an MCO are as follows:

- ...
(2) Any service or treatment that is not medically necessary[.]

COMAR 10.67.06.27A(2).

“Medically necessary” means that the service or benefit is:

- (a) Directly related to diagnostic, preventive, curative, palliative, rehabilitative, or ameliorative treatment of an illness, injury, disability, or health condition;
- (b) Consistent with current accepted standards of good medical practice;
- (c) The most cost efficient service that can be provided without sacrificing effectiveness or access to care; and
- (d) Not primarily for the convenience of the consumer, the consumer's family, or the provider.

COMAR 10.67.01.01B(112).

Burden of Proof

Unless otherwise provided, the standard of proof in a contested case hearing before the OAH is by a preponderance of the evidence, and the burden of proof lies with the party making an assertion or a claim. Md. Code Ann., State Gov’t § 10-217 (2014); COMAR 28.02.01.21K; *Comm’r of Labor & Indus. v. Bethlehem Steel Corp.*, 344 Md. 17, 34 (1996). To prove an assertion or a claim by a preponderance of the evidence means to show that it is “more likely so

than not so” when all the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002). Thus, as the party seeking to establish eligibility for the request, the Appellant bears the burden of proof by a preponderance of the evidence in the instant matter. For the reasons discussed below, I am not persuaded the Appellant has met her burden of proof.

Positions of the Parties

The Appellant contends that she should be deemed eligible for the requested service because she is in pain all the time. Despite diet, exercise and physical therapy, she has not experienced any relief from the pain which has impacted her quality of life and ability to seek gainful employment. She said she suffers from [REDACTED] and severe back pain. Her witnesses testified to having observed her pain and discomfort. The Appellant did not offer any documents into evidence to support her testimony or argument.

Ms. [REDACTED] testified for Amerigroup and explained that the MCO provides MA health benefits in Maryland for its members. Regarding Dr. [REDACTED]’s pre-authorization request, Ms. [REDACTED] testified the request was denied because Amerigroup determined that clinical appropriateness guidelines had not been satisfied. After an independent appeal process, Ms. [REDACTED] explained that the Amerigroup determination remains unchanged, i.e. the guidelines have not been met and, therefore, the procedures are not medically necessary.

Analysis

The uncontroverted evidence is that Guideline #CG-Surg-99 is a nationally recognized medical standard for the appropriateness of panniculectomy and abdominoplasty. (MCO Ex. 1, BS [REDACTED]0015 to [REDACTED]0020.) Ms. [REDACTED] repeatedly testified as such and her testimony was unimpeached. The Appellant offered no alternative medical appropriateness criteria.

Guideline #CG-Surg-99 sets forth that medical necessity requires that “there is a significant physical functional impairment AND the procedure can be reasonably expected to

improve the physical functional impairment.” (MCO Ex. 1, BS ■■■0015.) With regard to clinical indications, Guideline #CG-Surg-99 provides:

Medically Necessary:

- A. Panniculectomy is considered **medically necessary** for the individual who meets the following criteria:
1. The panniculus hangs below the level of the pubis (which is documented in photographs); **and**
 2. **One** of the following:
 - a. There are documented recurrent or chronic rashes, infections, cellulitis, or non-healing ulcers, that do not respond to conventional treatment...for a period of 3 months; **or**
 - b. There is documented difficulty with ambulation and interference with the activities of daily living; **and**
 3. Symptoms or functional impairment persists despite significant* weight loss which has been stable for at least 3 months or well-documented attempts at weight loss (medically supervised diet or bariatric surgery) have been unsuccessful; **and**
 4. If the individual has had bariatric surgery, he/she is at least 18 months post-operative or has stable weight loss for at least 3 months.

* Significant weight loss varies based on the individual clinical circumstances and may be documented when the individual:

- a. Reaches a body mass index (BMI) less than or equal to 30 kg/m²; **or**
- b. Has documented at least a 100 pound weight loss; **or**
- c. Has achieved a weight loss which is 40% or greater of the excess body weight that was present prior to the individual’s weight loss program or surgical intervention.

- B. Panniculectomy is considered **medical necessary** as an adjunct to a medically necessary surgery when needed for exposure in extraordinary circumstances.

(*Id.*) Further, Guideline #CG-Surg-99 states that “panniculectomy or abdominoplasty, with or without diastasis recti repair, for the treatment of back pain is **not medically necessary**.” (*Id.*)

The medical form provided in support of the Appellant’s preauthorization request reveals Dr. ■■■■■’s diagnosis of nontraumatic muscle separation, localized adiposity (excessive panniculus of abdomen), and rash. (MCO Ex. 1, BS ■■■0003 to ■■■0004.) Upon review of the request, Amerigroup noted that the Appellant received a gastric sleeve in July 2019. Her highest weight was 237 lbs. and at the time of review she weighed 183 lbs. with stable weight since

October 2019. Amerigroup further noted that no documentation of chronic rashes or infections (treatment and duration) had been provided (MCO Ex. 1, BS [REDACTED]0006) as well as a lack of guideline-defined significant weight loss. (MCO Ex. 1, BS [REDACTED]0008.) For these reasons, Dr. [REDACTED] denied preauthorization and on August 10, 2020, he provided denial notification to the Appellant and Dr. [REDACTED]. (MCO Ex. 1, BS [REDACTED]0021 to [REDACTED]0037.)

On September 17, 2020, and with the Appellant’s subsequent consent, Dr. [REDACTED] appealed Amerigroup’s denial. (MCO Ex. 1, BS [REDACTED]0038.) He submitted photographs, medical notes, and clinical documentation in support of the appeal.

Ms. [REDACTED] testified that the Appellant’s appeal required Amerigroup to engage separate and independent medical professionals to review her preauthorization request and all supporting documentation, including the additional information submitted by Dr. [REDACTED] on September 17, 2020. [REDACTED] external reviewer [REDACTED], M.D., who is board certified in plastic surgery, analyzed the materials, and concluded that the Appellant’s request is not medically necessary per Guideline #CG-Surg-99. (MCO Ex. 1, BS [REDACTED]0098.) In her report, Dr. [REDACTED] stated that Guideline #CG-Surg-99 is consistent with clinical practice standards and peer-reviewed literature established by the American Society of Plastic Surgeons. (MCO Ex. 1, BS [REDACTED]0098 to [REDACTED]0099.)

Applying the guideline, Dr. [REDACTED] noted:

<p>A. Panniculectomy is considered medically necessary for the individual who meets the following criteria: 1. The panniculus hangs below the level of the pubis (which is documented in photographs); and</p>	<p>NOT MET</p>
<p>2. One of the following: a. There are documented recurrent or chronic rashes, infections, cellulitis, or non-healing ulcers, that do not respond to conventional treatment...for a period of 3 months;</p>	<p>a. NOT MET</p>

<p>or</p> <p>b. There is documented difficulty with ambulation and interference with the activities of daily living; and</p>	b. NOT MET
<p>3. Symptoms or functional impairment persists despite significant* weight loss which has been stable for at least 3 months or well-documented attempts at weight loss (medically supervised diet or bariatric surgery) have been unsuccessful; and</p>	NOT MET
<p>4. If the individual has had bariatric surgery, he/she is at least 18 months post-operative or has stable weight loss for at least 3 months.</p>	NOT MET
<p>B. Panniculectomy is considered medical necessary as an adjunct to a medically necessary surgery when needed for exposure in extraordinary circumstances.</p>	NOT MET

(MCO Ex. 1, BS [REDACTED]0099.)

Dr. [REDACTED] explained that the Appellant’s request “lacked documentation of threat to health or function.” (MCO Ex. 1, BS [REDACTED]0098.) Dr. [REDACTED] explained, as follows:

You have excess skin and fat on your stomach. You have muscle separation from being pregnant. We don’t see that these stop you from doing your normal activities. We don’t see that any photos were sent in. We don’t see that you had rashes or infections that didn’t get better. Because of this, this is a cosmetic surgery. This surgery is not medically needed.

(*Id.*)⁶ Dr. [REDACTED] concluded by stating:

The clinical documentation does not demonstrate that the patient suffers from any significant physical symptoms that are causing functional impairment impairing the patient’s ability to perform activities of normal daily living and have failed at least a 3 month trial of a medically supervised conservative therapy including but not limited to, physical therapy, the use of appropriate anti-inflammatory agents, and appropriate local hygiene and topical pharmacologic treatments for intertrigo as supervised by a medical professional.

⁶ Although Dr. [REDACTED] stated to the contrary, Dr. [REDACTED] did submit photographs.

(MCO Ex. 1, BS [REDACTED]0099.) Thus, “the documentation does not demonstrate that the abdominal panniculus is long and large enough to significantly impede the member’s ability to ambulate or otherwise function and there is no documentation that the severe intractable, recurrent intertriginous dermatitis is not responsive to medical management.” (*Id.*) Finally, Dr. [REDACTED] noted that there are “no extenuating circumstances... because the patient does not have any significant functional impairment or physical symptoms related to the pannus.” (*Id.*)

Amerigroup physician [REDACTED], M.D. reviewed Dr [REDACTED]’s recommendation on October 16, 2020 and concurred. (MCO Ex. 1, BS [REDACTED]0013 to [REDACTED]0014.) Thereafter, Amerigroup notified the Appellant and Dr. [REDACTED] of its appeal determination by notice dated October 16, 2020. (MCO Ex. 1, BS [REDACTED]0102 to [REDACTED]0116.)

It is evident that Amerigroup complied with the MCO appeal process requirements set forth in COMAR 10.67.09.05. It is also evident that Amerigroup and [REDACTED] documented their review of the Appellant’s preauthorization request and supporting documentation. While I am sympathetic to the Appellant’s situation, I find that the evidence submitted on the Appellant’s behalf does not meet Guideline #CG-Surg-99 for panniculectomy and abdominoplasty. As the Appellant has not established that she meets the criteria for prior approval, I must uphold Amerigroup’s preauthorization denial.

CONCLUSION OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude as a matter of law that Amerigroup properly denied the Appellant’s preauthorization request for a panniculectomy and abdominoplasty based on a lack of medical necessity. COMAR 10.67.01.01B(112); COMAR 10.67.06.01; COMAR 10.67.06.27A(2).

ORDER

I hereby **ORDER** that the October 16, 2020 determination of Amerigroup Maryland, Inc. to deny the Appellant’s preauthorization request for a panniculectomy and abdominoplasty is

AFFIRMED.

January 19, 2021
Date Decision Mailed

Signature Appears on Original
[Redacted Signature]

Tracey Johns Delp
Administrative Law Judge

TJD/at
#190040

REVIEW RIGHTS

This is the final decision of the Maryland Department of Health. A party aggrieved by this decision may file a written petition for judicial review with the Circuit Court for Baltimore City, if any party resides in Baltimore City or has a principal place of business there, or with the circuit court for the county where any party resides or has a principal place of business. Md. Code Ann., State Gov’t § 10-222(c) (Supp. 2020). The original petition must be filed in the circuit court within thirty (30) days of the date of this decision, with a copy to Nicole Lugo Clark, Office of the Attorney General, Suite 302, 300 W. Preston St., Baltimore, MD 21201. Md. Rules 7-201 through 7-210.

The petition for judicial review should identify the Maryland Department of Health, which administers the Medicaid program, as the agency that made the decision for which judicial review is sought. The address of the Maryland Department of Health should be included on the petition: 201 W. Preston St., Room 511C, Baltimore, MD 21201.

A separate petition may be filed with the court to waive filing fees and costs on the ground of indigence. Md. Rule 1-325. No fees may be charged to Medical Assistance Program recipients, applicants, or authorized representatives for transcription costs or for preparation or delivery of the record to the circuit court.

The Office of Administrative Hearings is not a party to the judicial review process.

Copies Mailed To:

[Redacted]

[Redacted]

[Redacted] *Emailed*
[Redacted]

████████████████████,

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MARYLAND DEPARTMENT OF

HEALTH

* TRACEY JOHNS DELP,

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* THE MARYLAND OFFICE

* OF ADMINISTRATIVE HEARINGS

* OAH No.: MDH-MCP-012-20-25484

* * * * *

FILE EXHIBIT LIST

I admitted into evidence documents offered by the MCO as follows:

MCO Ex. 1 Notice of Remote Hearing, issued November 23, 2020, Bates Stamped (BS) █████0001, with attached documents, listed as follows:

- Print date receipt, August 6, 2020, BS █████0002
- Precertification request, August 5, 2020, BS █████0003
- Case Notes, various dates, BS █████0004 to █████0014
- Clinical UM Guideline, Panniculectomy and Abdominoplasty, publish date May 9, 2019, BS █████0015 to █████0020
- Letter from the MCO to the Appellant, August 10, 2020, BS █████0021 to █████0030
- Letter from the MCO to ████████████████████, M.D. (Dr. ██████████), August 10, 2020, BS █████0031 to █████0037
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- Letter from the MCO to the Appellant, October 2, 2020, BS █████0063 to █████0071
- Letter from the MCO to Dr. ██████████, October 2, 2020, BS █████0072 to █████0080
- Email from the Appellant to the MCO, October 5, 2020, BS █████0081
- Appeal Case Notes, various dates, BS █████0082 to █████0097
- ██████████ Case Report, undated, BS █████0098 to █████0101
- Letter from the MCO to the Appellant, October 16, 2020, BS █████0102 to █████0110
- Letter from the MCO to Dr. ██████████ October 16, 2020, BS █████0111 to █████0116
- COMAR 10.67.09.05, undated, BS █████0117 to █████0121

MCO Ex. 2 Fair Hearing Case Summary, undated

The Appellant did not offer any exhibits to be admitted into evidence.