

In the matter of:

<u>Appeal:</u>	<u>Program:</u>	<u>Disposition:</u>
1259521	MED	OVERRULED
No Compliance Required		
Decision Date:	02/15/2006	
Request Date:	11/21/2005	
Hearing Officer:	PAUL STANISZEWSKI	

## State Hearing Decision

### **ISSUE (1259521):**

To qualify for a Roux-en-y Surgery, an individual and her representatives must establish that the procedure is medically necessary. On 10/28/05, the MOS Section denied the prior authorization request because the procedure is not medically necessary.

The preponderance of the evidence establishes that the Medical Operations Section (MOS) determination is correct.

Therefore, the appeal is Overruled.

### **PROCEDURAL MATTERS:**

The ODJFS Medical Operations Section (MOS) mailed a Prior Authorization denial notice to the address of record on 10/28/05. On 11/21/05, the Bureau of State Hearings (BSH) received the State Hearing request.

The hearing was scheduled and heard on 01/05/06.

The agency representatives are Donna Higgins, MOS and Donna Nester, PCDJFS.

### **FINDINGS OF FACT:**

1. The assistance group consisted of the thirty-six (36) year-old appellant, her thirty-six (36) year-old husband, and their common children; ages 13, 11, and 7.
2. On 10/06/05, MOS received the Prior Authorization, Non-Covered procedure request for a Roux-en-y Surgery.
3. On 10/26/05, the Special Committee conducted a review of the objective medical documentation.
4. The Special Committee findings are reported as: "...there is no objective documentation appellant has severe, life-threatening co-morbidities that would warrant this non-covered service. The request was denied as not medically necessary.
5. Neither the appellant nor her physician submitted objective medical evidence in to the State Hearing Record that rebuts the Special Committee's Findings.

6. The denial notice was mailed to the address of record on 10/25/05.

**POLICY:**

Ohio Admin. Code §5101:3-1-01 Medicaid: medical necessity.

- (A) "Medical necessity" is a fundamental concept underlying the Medicaid program. Physicians, dentists, and limited practitioners render, authorize, or prescribe medical services within the scope of their licensure and based on their professional judgment regarding services needed by an individual. Unless a more specific definition regarding medical necessity for a particular category of service is included within division-level designation 5101:3 of the Administrative Code, "medically necessary services" are defined as services which are necessary for the diagnosis or treatment of disease, illness, or injury and without which the patient can be expected to suffer prolonged, increased or new morbidity, impairment of function, dysfunction of a body organ or part, or significant pain and discomfort. A medically necessary service must:
- (1) Meet generally accepted standards of medical practice;
  - (2) Be appropriate to the illness or injury for which it is performed as to type of service and expected outcome;
  - (3) Be appropriate to the intensity of service and level of setting;
  - (3) Provide unique, essential, and appropriate information when used for diagnostic purposes;
  - (4) Be the lowest cost alternative that effectively addresses and treats the medical problem;
  - (5) Meet general principles regarding reimbursement for Medicaid covered services found in rule 5101:3-1-02 of the Administrative Code.
- (B) Preventive health care, though not customarily thought of as a "medically necessary" service, is available through the department's early periodic screening, diagnosis and treatment (EPSDT, also known as HEALTHCHEK) program or through managed care plans (MCPs) which have contracted with the department.

Effective: May 30, 2002

Ohio Admin. Code §5101:3-4-28 Non-covered services.

- (I) ...Services for the treatment of obesity, including but not limited to gastroplasty, gastric stapling, or ileo-jejunal shunt, or other gastric restrictive procedures...

Effective Date: March 29, 2002

## **ANALYSIS:**

The thirty-six (36) year-old appellant is Medicaid eligible, effective 01/01/05. She alleges that she is morbidly obese.

On 10/06/05, MOS received the Prior Authorization, Non-Covered surgical procedure request for a Roux-en-y Surgery.

The Family Physician's Statement (Exhibit C) read in part, "She is a 35-year-old woman with a history of morbid obesity and "has been on numerous diets for at least five (5) years and has failed to lose any significant permanent weight." Her height is 5'6" and weight is 300 pounds. The Body Mass index is calculated to be 48.4."

On 10/26/05, the Special Committee conducted a review of the objective medical documentation. The Special Committee findings report that there is no objective documentation appellant has severe, life-threatening co-morbidities that would warrant this non-covered service. The request was denied as not medically necessary.

Based on the committee's review, MOS denied the prior authorization request because the service is not medically necessary and it is a Medicaid non-covered service.

It is noted that neither the appellant nor her physician submitted objective medical evidence in to the State Hearing Record that rebuts the Special Committee's Findings.

The Ohio Admin. Code §5101:3-4-28 expressly sets forth that services for the treatment of obesity, including but not limited to gastroplasty, gastric stapling, or ileo-jejunal shunt, or other gastric restrictive procedures are Medicaid non-covered services.

The hearing officer also reviewed the record thoroughly and determined that none of the appellant's statements establish that the procedure is medically necessary. Specifically, they are general statements that do not refer to specific tests that have been conducted, i.e., range of motion. There is no objective data that establishes that the procedure is medically necessary based on medical signs, symptoms, and findings.

The preponderance of the evidence establishes that the MOS determination is correct.

Therefore, the appeal is Overruled.

## **HEARING OFFICER'S RECOMMENDATIONS:**

Issue (1259521)

The appeal should be Overruled. The MOS denial is affirmed.

**OHIO DEPARTMENT OF JOB AND FAMILY SERVICES  
BUREAU OF STATE HEARINGS  
FINAL ADMINISTRATIVE DECISION AND ORDER:**

The Hearing Officer's recommendation is adopted.

Issue (1259521)

The appeal is Overruled. No orders of compliance shall be issued against the agency based on this appeal.



Ethan Chase, Hearing Authority

February 15, 2006

**Notice to Appellant**

This is the state hearing decision in your case. All papers and materials introduced at the hearing or otherwise filed make up the hearing record. The hearing record will be maintained by the Ohio Department of Job and Family Services.

If you believe this state hearing decision is wrong, you may request an administrative appeal by writing to: Ohio Department of Job and Family Services, Bureau of State Hearings, P.O. Box 182825, Columbus, Ohio 43218-2825 or FAX (614) 728-9574. Your request should state why you think the hearing decision is wrong. You can complete the appeal request form included with this decision. Your written request or appeal form must be received by the Bureau of State Hearings within 15 calendar days from the date this decision is issued. (If the 15th day falls on a weekend or holiday, this deadline is extended to the next work day.) During the 15-day administrative appeal period, you or your representative may request a free copy of the hearing record and recording of the hearing by calling the Bureau of State Hearings at 1-866-635-3748 (select option 1 from main menu).

If you want information on free legal services but don't know the number of your local legal aid office, you can call the Ohio State Legal Services Association, toll free, at 1-800-589-5888, for the local number.

**Aviso a la Apelante**

Esta es la decisión estatal administrativa de su caso. Todos los documentos y materiales presentados como prueba en la vista o de otra manera radicados componen el récord administrativo. El récord administrativo será mantenido por el Ohio Department of Job and Family Services.

Si usted cree que esta decisión estatal administrativa es errónea, usted puede solicitar una apelación administrativa escribiendo al: Ohio Department of Job and Family Services, Bureau of State Hearings, P.O. Box 182825, Columbus, Ohio 43218-2825 o facsímil (614) 728-9574. Su solicitud debe indicar por qué usted piensa que la decisión administrativa es errónea. Usted puede completar la solicitud de apelación incluida con esta decisión. Su solicitud escrita o formulario de apelación tiene que ser recibido por el Bureau of State Hearings dentro de los 15 días calendario desde la fecha en que esta decisión es expedida. (Si el 15to. día recae sobre un fin de semana o un día feriado, esta fecha límite es extendida al próximo día laborable). Durante el período de 15 días de apelación administrativa, usted o su representante pueden solicitar una copia gratuita del récord administrativo y de la grabación de la vista llamando al Bureau of State Hearings al 1-866-635-3748 (seleccione la opción 1 del menú principal).

Si usted quiere información sobre servicios legales gratuitos pero no sabe el número de su oficina local de servicios legales, usted puede llamar al Ohio State Legal Services Association, gratuitamente, al 1-800-589-5888, para el número local.

**STATE HEARING DECISION CONTINUATION**

**Appendix**

**AGENCY EXHIBITS:**

- A. Appeal Summary (1 p)
- B. Notice (1 p)
- C. MOS Appeal Summary (3 p)

**APPELLANT EXHIBITS:**

- 1. State Hearing Request (2 p)