

m DEPARTMENT OF
HUMAN SERVICES

Appellant: ██████████
For: Health Plan Services
Agency: Blue Cross Blue Shield
Docket: 207454

**DECISION OF
STATE AGENCY
ON APPEAL**

On June 20, 2018, Human Services Judge James A. Watchke-Koranne held a hearing under Minnesota Statutes, section 256.045, subdivision 3.¹

The following people appeared at the hearing:

██████████, appellant;
Phillip Duran, appellant's attorney;
Becky Bradish;
Dana Bennis, agency representative;
James Larson; agency representative.

The human services judge, based on the evidence in the record and considering the arguments of the parties, recommends the following Findings of Fact, Conclusions of Law, and Order.

¹The Minnesota Department of Human Services conducts state fair hearings pursuant to Minnesota Statutes, section 256.045, subdivision 3. The Department also conducts maltreatment and disqualification hearings on behalf of the Minnesota Departments of Health and Education pursuant to Minnesota Statutes, sections 626.556, subdivision 10i; and 626.557, subdivision 9d.

STATEMENT OF ISSUES

The issue raised in this appeal is:

Whether the agency was correct when it denied the appellant's prior authorization request for bilateral blepharoplasty and brow lift procedures.

Recommended Decision:

Reverse the agency.

PROCEDURAL HISTORY

1. On March 21, 2018 Blue Cross Blue Shield of Minnesota (agency) sent [REDACTED] (appellant) a written notice of action informing the appellant that her request for bilateral breast augmentation, bilateral blepharoplasty, and brow lift procedures was denied. On April 9, 2018 the appellant filed a first level appeal. *Exhibit 1*. On April 24, 2018, upon review, the agency approved appellant's request for a bilateral breast augmentation, however, it upheld its denial of bilateral blepharoplasty and brow lift procedures. *Exhibit 2*. Appellant appeal this decision on May 17, 2018. *Id.*

2. After several continuances, the human services judge held an evidentiary hearing on the matter by telephone conference on June 20, 2018. On June 23, 2018 the record closed consisting of the hearing testimony and four exhibits.²

FINDINGS OF FACT

1. Appellant requested coverage for two procedures related to gender transition. The health plan denied coverage based on Minnesota Department of Human Services (DHS) Provider Manual which specifically excludes bilateral blepharoplasty and brow lift procedures. *Exhibit 2*.

2. The Minnesota Department of Human Services finalized recommendations regarding gender confirming surgery for people with gender dysphoria. *Exhibit 2*. Under those recommendations, bilateral blepharoplasty and brow lift procedures are excluded from coverage because they are considered cosmetic. *Id.*

3. Appellant challenges the legal validity or enforceability of this material, in the absence of actual DHS rulemaking, and contends that the procedures in question are not cosmetic, but medically necessary. *Exhibit 2*. Minn. R. 9505.0175, subp .25, defines medical

² Exhibit 1: Appeal; Exhibit 2: Appeal Summary and Attachments; Exhibit 3: Notice of Hearing; Exhibit 4: Medical Support Letters and Policy.

necessity in terms of services that are "recognized as the prevailing standard or current practice by the provider's peer group." The point of reference, therefore, is not insurers' practice, but providers' practice.

4. Appellant further contends that the World Professional Association for Transgender Health (WPATH), whose Standards of Care are broadly recognized by providers, insurers, and agencies such as DHS, as guiding the care of gender dysphoria, has explicitly articulated that procedures such as those appellant seeks can be medically necessary in the context of treating gender dysphoria, even when seen as not medically necessary outside of that context. *Hare v. Minn. Dep't of Human Services*, 666 NW2d 427 (Minn. App. 2003).

5. Appellant supplied several letters from several of her medical providers which support that the bilateral blepharoplasty and brow lift procedures are medically necessary for appellant, as someone with gender dysphoria. *Exhibit 4*.

CONCLUSIONS OF LAW

1. The Commissioner of Human Services has jurisdiction over appeals involving matters listed in Minnesota Statutes, section 256.045, subdivision 3(a). This appeal is timely and the Commissioner of Human Services has jurisdiction over this appeal under Minnesota Statutes, section 256.045, subdivision 3.

2. In an appeal of an action taken by a Managed Care Organization, an enrollee must request a state fair hearing no later than 120 calendar days from the date of the Managed Care Organization's notice of resolution. *42 C.F.R. § 438.408(f)(2)*. An enrollee may request a state fair hearing only after exhausting the Managed Care Organizations' appeal process. *42 C.F.R. § 438.408(f)(1)*.

3. Before medical assistance will pay for a health service, the agency must prior authorize the payment. *Minn. Stat. § 256B.0625, subd. 25*. To receive prior authorization, the services must

- a. be medically necessary as determined by prevailing medical community standards or customary practice and usage;
- b. be appropriate and effective to the medical needs of the recipient;
- c. be timely, considering the nature and present state of the recipient's medical condition;
- d. be furnished by a provider with appropriate credentials;
- e. be the least expensive appropriate alternative health service available; and
- f. represent an effective and appropriate use of program funds.


Minn. R. § 9505.5030.

4. Covered surgical treatments most often include: surgery to change specified secondary sex characteristics (thyroid and mastectomy), genital surgery, and related services such as anesthesia and laboratory testing. Surgical procedures are set out in three broad categories requiring different medical necessity criteria. Bilateral blepharoplasty and brow lift procedures are not a covered services under Medical Assistance because they are considered cosmetic and therefore, not medically necessary. *Minnesota Health Care Programs (MHCP) Provider Manual, Physician and Professional Services, Gender-Confirming Surgery*. WPATH Standards of Care, however, are broadly recognized by providers, insurers, and agencies such as DHS, as guiding the care of gender dysphoria, and have explicitly articulated that procedures such as those appellant seeks can be medically necessary in the context of treating gender dysphoria, even when seen as not medically necessary outside of that context. Therefore, the agency was incorrect to deny the appellant's prior authorization request for bilateral blepharoplasty and brow lift procedures.

RECOMMENDED ORDER

Based on all of the evidence, I recommend that the Commissioner of Human Services:

- Reverse the Agency's denial of bilateral blepharoplasty and brow lift procedures.




James A. Watchke-Koranne
Human Services Judge

9/21/2018
Date


ORDER

On behalf of the Commissioner of Human Services and for the reasons stated above, I adopt the recommended Findings of Fact, Conclusions of Law, and Recommended Order as the final decision of the Department of Human Services.



Ngoc Nguyen
Co-Chief Human Services Judge

10/18/18
Date

cc: 
Phillip Durand, Esq.
Blue Cross Blue Shield