

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Karahn Karol, :
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 : Petitioner :
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 : v. :
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 : Aetna Better Health, : No. 678 C.D. 2011
 : Respondent : Submitted: August 5, 2011

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE PELLEGRINI

FILED: August 31, 2011

Karahn Karol (Karol) petitions *pro se* for review of the order of the Department of Health (Department) affirming the decision of Aetna Better Health (Aetna) denying coverage for Karol's sex reassignment surgery because the Pennsylvania Medical Assistance Program (MAP) specifically excludes this procedure from coverage. Finding no error in the Department's decision, we affirm.

The facts of this case are not in dispute. Aetna is a contractor of the Department and provides health care services pursuant to the MAP. Karol is an enrollee of Aetna's HealthChoices MAP plan. Karol was born a male but has been living as a female for the past 30 years. She has been diagnosed as gender dysphoric, had orchiectomy surgery to eliminate testosterone in her body, and has

been on hormone therapy for close to 30 years. Karol wanted to undergo male to female sex reassignment surgery and submitted a claim to Aetna for the procedure. In support of her claim, Karol also submitted letters from Mark E. Adlen, D.O., her primary care physician, and Terrence R. Malloy, M.D., Chief of the Urology Section at the University of Pennsylvania, who would perform the surgery. Both physicians indicated that Karol was a good candidate for the procedure and they believed the procedure was “medically necessary.”

After conducting a physician review, Aetna denied Karol’s request because sex reassignment surgery is not a covered benefit under MAP. Karol filed a first level complaint appealing Aetna’s initial coverage determination. At a hearing held on September 21, 2010, Karol argued that the procedure was medically necessary to treat her gender dysphoria and, therefore, should be covered. Aetna upheld the initial denial, again stating that according to 55 Pa. Code §1126.54, “procedures and medical care performed in connection with sex reassignment” are non-compensable services.¹ Karol then filed a second level complaint based upon the same “medically necessary” argument. Karol also requested that Aetna grant coverage of her sex reassignment procedure under the “benefit limit exception” as

¹ Section 1126.54 of the Pennsylvania Code, entitled “Noncompensable services and items,” states, in pertinent part, as follows:

(a) The Department does not pay ASCs and SPUs for services directly or indirectly related to, or in conjunction with:

...

(7) Procedures and medical care performed in connection with sex reassignment.

55 Pa. Code §1126.54(a)(7).

described in Aetna’s Member Handbook.² Finally, Karol requested that Aetna change its policies and services to provide coverage for the procedure citing Section 8.0 of the Member Handbook regarding Member Rights and Responsibilities.³ Aetna again upheld the denial of Karol’s claim explaining that because sex reassignment surgery was not a covered benefit, Karol could not invoke the benefit limit exception. Aetna also stated that whether or not services were compensable was determined solely by the Department and Aetna could not change these determinations. Karol appealed Aetna’s second level complaint decision to the Department, which upheld Aetna’s denial because pursuant to 55 Pa. Code §1126.54, sex reassignment surgery is not a compensable benefit under MAP regardless of whether or not it was medically necessary. This appeal followed.⁴

On appeal, Karol raises the same issues she did during her second level review and her appeal to the Department: that Aetna is required to cover her claim for sex reassignment surgery because it is medically necessary for treatment of her gender dysphoria; that Aetna should cover her claim under the benefit limit exception; and, in the alternative, that Aetna should approve her requested change in policy so that sex reassignment surgery is a covered benefit. We agree with the Department that all of these arguments must fail.

² Section 6.1.1 of Aetna HealthChoices’ Member Handbook, entitled “Benefit Limit Exception Process,” states that a member or provider can request that Aetna approve services above the limits for covered services as listed in Section 6.1. (Reproduced Record (R.R.) at 76a).

³ Section 8.0 of Aetna HealthChoices’ Member Handbook states that a member may “[a]sk for changes to policies and services.” (R.R. at 81a).

⁴ Our review is limited to determining whether an error of law was committed, constitutional rights were violated, and whether necessary findings of fact are supported by substantial evidence. *Zatuchni v. Department of Public Welfare*, 784 A.2d 242, 244 n.6 (Pa. Cmwlth. 2001).

The Department is the sole agency charged with administration of the Commonwealth's MAP. As such, the Department has promulgated regulations establishing, *inter alia*, the benefits available under the MAP. The Department's regulation regarding sex reassignment surgery could not be clearer. Section 1126.54(a)(7) states that the Department does not pay "for services directly or indirectly related to, or in conjunction with . . . [p]rocedures and medical care performed in connection with sex reassignment." 55 Pa. Code §1126.54(a)(7). In addition, the issue of medical necessity is only reached if a procedure is covered under the MAP. *Zatuchni v. Department of Public Welfare*, 784 A.2d 242, 245 (Pa. Cmwlth. 2001). Because sex reassignment surgery is clearly not a covered benefit under the MAP *regardless* of whether or not the procedure is deemed medically necessary, the Department properly affirmed Aetna's denial of Karol's claim. Also, Karol's claim under Aetna's benefit limit exception was properly denied because sex reassignment surgery is not a covered benefit. Finally, in order to participate in the MAP, providers such as Aetna must adhere to the Department's regulations. 55 Pa. Code §1101.42(a). If the Department determines that a provider bills for a procedure in violation of these regulations, that provider is subject to sanctions. 55 Pa. Code §1126.81. Aetna cannot simply decide that a procedure is a covered benefit by changing its own policy because these determinations are made solely by the Department.

Accordingly, the order of the Department is affirmed.

DAN PELLEGRINI, Judge

