State of New Jersey
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
PO BOX 712
TRENTON, NJ 08625-0712

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

CAROLE JOHNSON
Commissioner

JENNIFER LANGER JACOBS
Assistant Commissioner

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

G.P.S., PETITIONER,	:	**ADMINISTRATIVE ACTION**
v.	:	**FINAL AGENCY DECISION**
UNITED HEALTHCARE. RESPONDENTS.	:	**OAL DKT. NO. HMA 1285-2019**

As Assistant Commissioner of the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision, the OAL case file and the documents filed below. Petitioner and Respondent filed exceptions in this matter.[1] Procedurally, the time period for the Agency Head to render a Final Agency Decision is November 29, 2019 in accordance with an Order of Extension.

The matter arises regarding the denial of Petitioner's request to have a

[1] Both exceptions are procedurally deficient. N.J.A.C. 1:1-18.4(c) which states "[e]vidence not presented at the hearing shall not be submitted as part of an exception, nor shall it be incorporated or referenced within exceptions." Petitioner attached documents not in evidence below and also referred to a document that the ALJ has specifically rejected as part of the record below as not relevant. Contrary to N.J.A.C. 1:10b-18.2 Respondent filed a reply in response to Petitioner's filing that also mentions Petitioner's improper inclusion of documents that were not presented below. To the extent each of the exceptions are deficient, they are not considered.

deflated saline breast implant removed. The implants were inserted in 1997 as a cosmetic procedure. Petitioner, who is represented by Legal Services, is seeking to have the removal of the implant covered by Medicaid. United HealthCare denied the request. Petitioner appealed to the Department of Banking and Insurance for an external appeal by the independent utilization review organization (IURO) pursuant to N.J.A.C.11:24-8.7 and 11:24A-3.6. That clinical review upheld United HealthCare's denial of the removal of the implant. P-6. Petitioner then sought a Medicaid fair hearing.

The facts of the case show that Petitioner does not meet the criteria for breast implant removal. The original surgery was cosmetic in nature and not done post mastectomy. Petitioner was referred to a surgeon by her primary physician on October 24, 2017 due to a rupture of her implant. She visited her primary physician two more times but did not report pain. P1 at 13 and 17. Nearly a year later in August 2018, she consulted with a plastic surgeon, reporting that she had pain, and sought to have both implants removed. P-2. She signed a fee agreement to pay $7,857 for the surgery. P-3. The chart notes for that consult appear twice in the record at P-2 and at R-2 but the documents are not identical. On the chart notes faxed to United on September 5, 2018, the phrase "would like to try for insurance coverage" has been added. The request for the procedure to be covered was denied on September 18, 2018. Id at 3.

On September 28, 2018, Petitioner visited her primary physician again complaining that she had pain and discomfort. She stated she wanted the implant removed "but in a way insurance can cover." R-1 at 9.

On October 24, 2018, Petitioner requested that her primary physician to put in an order that the implant removal was medically necessary. P-1 at 7. The

exam notes show that she had normal range of movement in all extremities, no arm pain on exertion or any depression or sleep disturbances. P-1 at 7 and 8. She received a referral to see a surgeon.

The issue in the matter turns on whether the removal of the deflated saline implant was medically necessary so as to be covered by Medicaid. Under the regulations, medically necessary are defined as:

> . . .services or supplies necessary to prevent, diagnose, correct, prevent the worsening of, alleviate, ameliorate, or cure a physical or mental illness or condition; to maintain health; to prevent the onset of an illness, condition, or disability; to prevent or treat a condition that endangers life or causes suffering or pain or results in illness or infirmity; to prevent the deterioration of a condition; to promote the development or maintenance of maximal functioning capacity in performing daily activities, taking into account both the functional capacity of the individual and those functional capacities that are appropriate to individuals of the same age; to prevent or treat a condition that threatens to cause or aggravate a handicap or cause physical deformity or malfunction, and there is no other equally effective, more conservative or substantially less costly course of treatment available or suitable for the enrollee. The services provided, as well as the treatment, the type of provider and the setting, are reflective of the level of services that can be safely provided, are consistent with the diagnosis of the condition and appropriate to the specific medical needs of the enrollee and not solely for the convenience of the enrollee or provider of service and in accordance with standards of good medical practice and generally recognized by the medical scientific community as effective. Course of treatment may include mere observation or, where appropriate, no treatment at all. Experimental services or services generally regarded by the medical profession as unacceptable treatment are deemed not medically necessary. Medically necessary services provided are based on peer-reviewed publications, expert pediatric, psychiatric, and medical opinion, and medical/pediatric community acceptance. In the case of pediatric enrollees, this definition applies, with the additional criteria that the services, including those found to be needed by a child as a result of a comprehensive screening visit or an inter-periodic encounter, N.J.A.C. 10:74-1.4 whether or not they are ordinarily covered services for all other Medicaid/NJ FamilyCare enrollees, are appropriate for the age and health status of the individual and that the service will aid the overall physical and mental growth and development of the individual and the service will assist in achieving or maintaining functional capacity.
> N.J.A.C. 10:74-1.4

I concur with the ALJ's findings that Petitioner failed to present evidence that demonstrates the removal of the implant is medically necessary. There is

no expert medical opinion that the deflated implant was the cause of the discomfort. ID at 12. Neither the primary physician nor the surgeon indicated that remove of the failed implant was medically necessary for pain. Furthermore, the pain was not reported until ten months after the deflation. Petitioner's claim that the medical records show this is misguided. At most Petitioner was given a referral to see a surgeon "for breast implant removal or replacement for medical necessity." P-1 at 8. This is not a finding of medical necessity but is a recommendation to see a specialist. Petitioner had informed the nurse practitioner at the beginning of the exam that she needed her primary physician to state that the removal or replacement of the implant was medically necessary to have insurance cover the procedure.

The Initial Decision also found, after a careful review of the record, that there is simply no definitive statement or diagnosis by any health care professional that Petitioner's pain was from the deflated implant or if there was some other source. ID at 11. I agree with the ALJ's description that the August 29, 2018 notes from the plastic surgeon are nebulous as to the cause of the pain and it is unclear if the notes reflect Petitioner's own comments. As United's medical director testified, there was no evidence that Petitioner meets any of the other conditions that could warrant coverage. As the ALJ noted, Petitioner's records showed that she did not have "limited movement leading to an inability to perform tasks that involve reaching or abduction." ID at 9. She continued to work her normal hours as a physical therapy aide and did not have any limitations in any activities.

Based on the record before me and for the reasons enumerated above, I hereby ADOPT the Initial Decision. Petitioner's exceptions do not establish a basis to reverse the Initial Decision. There is no competent evidence to support

Petitioner's medical records provide evidence that supports a finding that the removal of the implant is medically necessary.

THEREFORE, it is on this 26th day of NOVEMBER 2019,

ORDERED:

That the Initial Decision is hereby ADOPTED;

Jennifer Langer Jacobs, Assistant Commissioner
Division of Medical Assistance
and Health Services