STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

[redacted]

Appellant

_____/

Docket No. 2010-16100 PA
[redacted]

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.,* upon the Appellant's request for a hearing.

After due notice, a hearing was held on [redacted]. [redacted], [redacted] Billing Department, appeared as the Appellant's representative. [redacted] appeared and testified. [redacted] Coordinator, appeared as a witness for the Appellant. [redacted], Appeals Review Officer, represented the Department. [redacted] RN Utilization Analyst, appeared as a witness for the Department.

ISSUE

Did the Department properly deny the Appellant's prior authorization request for a Bi-Level Positive Airway Pressure Device (BIPAP)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. The Appellant is a [redacted] Medicaid beneficiary who suffers from obstructive sleep apnea. (Exhibit 1, page 11)

2. On [redacted], the Department received a Prior Approval-Request/Authorization from Vitalcare requesting BIPAP for the Appellant. (Department Exhibit 1 pages 11-16)

3. On [redacted], the Department denied the prior authorization request because the records note that the patient smokes and policy does not allow coverage for items when beneficiaries are non-compliant. The

denial notice also stated the request was denied because there was no documented evidence of CPAP failure and the sleep lab working to implement different applications. (Department Exhibit 1, page 18)

4. On [redacted], the Department received a second Prior Approval-Request/Authorization from [redacted] requesting BIPAP for the Appellant with more complete documentation attached. (Department Exhibit 1 pages 19-28)

5. On [redacted], the Department denied the second prior authorization request stating that the information provided did not support coverage for this service, again citing the policy regarding non-compliance and the BIPAP coverage criteria. (Department Exhibit 1, page 10)

6. On [redacted], the State Office of Administrative Hearings and Rules received the Appellant's hearing request. (Department Exhibit 1, pages 4-7)

CONCLUSIONS OF LAW

The Medical Assistance Program is established pursuant to Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). It is administered in accordance with state statute, the Social Welfare Act, the Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

The Standards of Coverage for a Bi-Level Positive Airway Pressure Device (BIPAP) can be found in the Medical Supplier section of the Medicaid Provider Manual:

2.2 BI-LEVEL POSITIVE AIRWAY PRESSURE DEVICE

Definition
The bi-level positive airway pressure (BIPAP) device delivers a noninvasive positive air pressure into the upper airway to assist spontaneous respiratory efforts. The device has two pressure levels (one for breathing in and one for breathing out).

Standards of Coverage
A BIPAP device **without the backup rate feature** may be covered for the following conditions for up to four months:

- For Obstructive Sleep Apnea (OSA), if the sleep study (polysomnogram) performed in an accredited Sleep Center or Sleep Laboratory documents the following:

  - Continuous airway pressure of 13-15 cm water does not adequately control/eliminate obstructive/hypopneic events; or
  - The beneficiary cannot tolerate continuous positive airway pressures of greater than or equal to 12 cm water, in addition to evidence that the sleep lab has worked with the beneficiary to try different application devices, ramp times, relaxation techniques, etc.
- For respiratory failure if there are lab values (i.e., arterial blood gas [ABG], venous blood gas [VBG] or capillary blood gas) indicating respiratory failure and follow-up lab values documenting improvement with the use of a BIPAP.
- For a diagnosis/medical condition for which a CPAP is inappropriate for use (e.g., cardiomyopathy, corpulmonale, primary pulmonary hypertension, left ventricular hypertrophy, etc.).

A BIPAP device **with the backup rate feature** may be covered if the beneficiary requires the backup feature due to insufficient spontaneous respiratory efforts (e.g., inadequate negative respiratory force due to central apnea, neuromuscular diseases such as muscular dystrophy, etc.).

Documentation
Documentation must be less than 90 days old and include:

- Diagnosis related to the need for BIPAP.
- BIPAP settings and number of hours per day used.
- Other medical conditions ruling out the appropriate use of a CPAP if present (e.g., cardiomegaly, left ventricular hypertrophy, primary pulmonary hypertension, etc.).
- For diagnosis of OSA, results of a sleep study (polysomnogram) including CPAP/BIPAP titration.
- For diagnosis of respiratory failure, test results substantiating the condition (e.g., ABG, VBG, or capillary blood gas) as well as test results showing improvement on BIPAP Negative inspiratory force measurement, if appropriate.

For continued coverage beyond the initial four months, the following additional information must be provided:

- Medical statement indicating beneficiary is stable and the BIPAP device settings are adequate.
- Documentation of beneficiary compliance through the review of equipment use logs.

PA Requirements
PA is required for all BIPAP requests.

Payment Rules
BIPAP units are considered a **capped rental** item and are inclusive of all of the following:

- All accessories needed to use the unit (e.g., tubing, application devices, chinstrap, headgear, etc.).
- Education on the proper use and care of the equipment.
- Routine servicing and all necessary repairs or replacements to make the unit functional.

MDCH Medicaid Provider Manual,
Medical Supplier Section 2.2,
October 1, 2009, pages 19-20.

The Medical Supplier section of the Medicaid Provider Manual also addresses noncovered items, which includes "items for a beneficiary who is non-compliant with a physician's plan of care (or) items ordered for the purpose of solving problems related to noncompliance (e.g., insulin pump)" *MDCH Medicaid Provider Manual, Medical Supplier Section 1.10, October 1, 2009, pages 14-16.*

In the present case, two prior authorization requests were submitted on the Appellant's behalf requesting BIPAP for her obstructive sleep apnea. (Exhibit 1, pages 8-9, 11-16 and 19-28)

The Department denied the first prior authorization request based their determination that the Appellant was noncompliant under section 1.10 of the policy as well as a lack of documentation of CPAP failure and that the sleep lab worked to implement different applications under section 2.2 of the policy. (Exhibit 1, pages 11 and 17-18)

The Department's position that there was no documentation of CPAP failure is contradicted by the evidence. The submitted sleep center technician notes clearly state "CPAP Failure" at the time of 04:19. The prior notes on this page document that by this time, the continuous airway pressure had been increased to 13 cm water over the preceding two hours. (Exhibit 1, page 13) This evidence supports the Appellant meeting the obstructive sleep apnea BIPAP criteria found in section 2.2 of continuous airway pressure of 13-15 cm water not adequately controlling or eliminating obstructive/hypopneic events. However, the Department found that this was not sufficient documentation of CPAP failure because there was no report confirming the CPAP failure documented in the technicians notes. (Exhibit 1, page 9) It is noted that the Department did not ask for additional information, such as a copy of the report, prior to denying the request.

The Department's denial of this request based upon a lack of documentation of the sleep lab working to implement different applications is not supported by the policy. This was part of the second criteria listed for BIPAP for obstructive sleep apnea. The policy only requires that either the first or the second criteria be met, not both. In the

present case, the evidence supports the Appellant's meeting the first criteria, therefore the specific evidence described in the second criteria is not required.

The Department's position that the Appellant was noncompliant because she smokes is also not supported under the policy. Section 1.10 requires applies when a beneficiary is noncompliant with a physicians plan of care or when the item(s) are ordered for the purpose of solving problems related to noncompliance. The Department presented no evidence that the BIPAP was ordered to solve a problem relating to noncompliance.

The Department has also not presented any evidence of a plan of care relating to smoking from the Appellant's doctor, let alone that the Appellant was noncompliant with this treatment plan. The Department's only evidence of noncompliance was the documentation noting that the Appellant smokes. Specifically, the sleep center technician notes document that the Appellant left the room to have a smoke at 05:34. (Exhibit 1, pages 13) The Appellant testified that when she woke around 5:30 am she thought the study was over, which is why she left the room to smoke. According to the documentation, this was more than an hour after the CPAP failure and subsequent switch to the BIPAP machine. (Exhibit 1, page 13) The Appellant also testified that she has been trying to cut back on smoking on her own but her doctor has never given her any plan of care to stop smoking.

The Department denied the second prior authorization request based their determination that the information provided did not support coverage of this service, again citing sections 2.2 and 1.10 of the Medicaid Provider Manual, Medical Supplier section. (Exhibit 1, page 10) Again, the determination was based on the notation that the Appellant smoked and insufficient documentation of CPAP failure. (Exhibit 1, pages 9 and 29)

No additional evidence regarding smoking was gathered to evaluate this request. Accordingly, the Department's position the smoking itself is evidence of noncompliance with a physician's plan of care can not be supported for the reasons discussed above.

A copy of the Sleep Study Report was submitted with this second prior authorization request. (Exhibit 1, pages 20-21) This report does confirm the CPAP failure documented in the technician's notes stating "she was initially treated with CPAP titrated to a pressure of 13 cm but because of continuing ongoing events, she was switched over to a Bi-Level device." (Exhibit 1, page 20) The Department's position that there was not sufficient evidence of CPAP failure can not be sustained.

Further, the Department can not deny the BIPAP just because the documentation shows the Appellant had been using a CPAP on a regular basis. (Exhibit 1, page 9) The fact that the Appellant had been using the CPAP prior to this sleep study does not imply that treatment was still effective. To the contrary, the Sleep Study Report notes that the Appellant "continued to have obstructive events and snoring with the CPAP. She was switched over to the Bi-Level device, which she tolerated well. A pressure support of five with an expiratory pressure of eleven appeared adequate to control her events." (Exhibit 1, page 20)

Based on the information submitted to the Department, the Appellant did meet the standards of coverage for BIPAP. The medical documentation submitted with the prior authorization request does document CPAP failure. (Exhibit 1, page 13) Specifically a continuous airway pressure of 13 cm water failed to adequately control/eliminate obstructive/hypopneic events. (Exhibit 1, page 20) The Department's position that the Appellant was noncompliant because she smokes can not be upheld. The Department presented no evidence that the item was being ordered for the purpose of solving problems related to noncompliance or that Appellant's physician made an actual plan of care regarding smoking, which the Appellant was noncompliant with.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department improperly denied the Appellant's request for BIPAP based upon the available information.

IT IS THEREFORE ORDERED that:

The Department's decision is REVERSED. The Department is hereby ordered to approve the prior authorization request submitted on the Appellant's behalf.

Colleen Lack
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: 4/13/2010

***** NOTICE *****

The State Office of Administrative Hearings and Rules may order a rehearing on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. The State Office of Administrative Hearings and Rules will not order a rehearing on the Department's motion where the final decision or rehearing cannot be implemented within 90 days of the filing of the original request. The Appellant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt of the rehearing decision.