

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

██████████

Appellant

_____ /

Docket No. 2010-23428 PA

██████████

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 scheduled for Wednesday, ██████████. The hearing was rescheduled for ██████████, when it was discovered that no hearing summary had been produced.

██████████, advocate, appeared on behalf of the Appellant. Her witnesses were ██████████, speech pathologist and ██████████, sales representative. ██████████, speech pathologist, represented and testified for the Department.

On the date of rescheduled hearing the Appellant's advocate observed that she did not receive the same hearing summary as the ALJ.

PRELIMINARY MATTER

On the date of hearing the record was left open to receive a video recording [disc] supporting the testimony of Department's witness. The disc was not received.

ISSUE

Did the Department properly deny Appellant's request for prior authorization (PA) of a "Dynavox" speech generating device (SGD)?

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 ██████████ Medicaid beneficiary. (Appellant's Exhibit #1)
2. The Appellant is afflicted with the residuals of CVA (brainstem), quadriplegia and tracheostomy. (Department's Exhibit A, p. 8 and Appellant's Exhibit #1)
3. The Appellant is unable to speak and his communication is limited to head movement and eye gaze. (Department's Exhibit A, p. 8 and Appellant's Exhibit #3)
4. An application for PA was submitted on ██████████. (Department's Exhibit A, pp. 12 – 16)
5. The Department requested additional information on ██████████ and ██████████ (Department's Exhibit A, pp. 12, 14)
6. On ██████████ the Department denied PA owing to "insufficient data." (Department's Exhibit A, p. 13)
7. The Department requested video documentation of the Appellant utilizing the requested system. (Department's Exhibit A, p. 14)
8. Following receipt of additional information the Department denied PA on ██████████ ██████████ for lack of cost effectiveness. (Department's Exhibit A, pp. 23, 24)
9. The instant request for hearing was received ██████████. (Appellant's Exhibit #1)

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.

1.10 PRIOR AUTHORIZATION

Medicaid requires prior authorization (PA) to cover certain services before those services are rendered to the beneficiary. The purpose of PA is to review the medical need for certain services....

Medicaid Provider Manual, (MPM), Practitioner, April 1, 2010, page 4.

Medicaid Provider Manual policy governing coverage for speech generating devices is as follows:

[Speech Generating Device]

Definition A Speech Generating Device (SGD) is defined as any electric or nonelectric aid or device that replaces or enhances lost communication skills. The device must be an integral part of a treatment plan for a person with a severe communication disability who is otherwise unable to communicate basic functional needs.

Standards of Coverage

SGDs may be covered under the following conditions for beneficiaries who demonstrate the comprehension and physical skills necessary to communicate using the requested device.

- **Prosthetic Function** - To replace a missing body part, to prevent or correct physical deformity or malfunction, or to support a weak or deformed portion of the body.
- **Rehabilitative Function** - To restore communication skills to the previous functional level by providing a tool to the beneficiary. A speech-language pathologist, in conjunction with other disciplines such as occupational therapists, physical therapists, psychologists, and seating specialists as needed, must provide a thorough and systematic evaluation of the beneficiary's receptive and expressive communication abilities. Ancillary professionals must possess proper credentials

Documentation

Documentation must be within 90 days and include:

- Medical diagnosis. (The medical diagnosis must directly relate to the beneficiary's communication deficit.)
- Specifications for the SGD. (Refer to the Outpatient Therapy Chapter)
- Necessary therapy and training to allow the beneficiary to meet functional needs.

All SGD evaluation documentation must be submitted following the established criteria stated within the Evaluations and Follow-up for Speech Generating Devices subsection of the Outpatient Therapy Chapter.

Documentation for modifications must indicate the changes in the beneficiary's functional or medical status that necessitate the need for modifications in the system or parts.

PA Requirements

The speech-language pathologist performs the functional communication assessment and SGD evaluation and initiates the PA request with a medical supplier that has a specialty enrollment with the MDCH to provide SGDs. To improve beneficiary access to low-end devices, a medical supplier without a SGD specialty enrollment with MDCH may provide SGDs with eight minutes or less of speech capability, basic SGD accessories such as switches, buttons, etc., or SGD wheelchair mounting systems.

A SGD vendor must enroll through the MDCH CHAMPS PE on-line system as a medical supplier with a subspecialty of Speech Generating Devices in order to provide the full range of SGDs. (Refer to the Directory Appendix for contact information.)

PA is required for all SGD systems. Required documentation must accompany the Special Services Prior Approval—Request/Authorization (MSA-1653-B) when requesting authorization for all original and replacement/upgrade SGD requests.

A copy of the physician prescription must be submitted with the request for an SGD. The prescription must be based on the evaluation of an individual's communication abilities and medical needs made by a speech-language pathologist and other evaluation team members (as appropriate).

Payment Rules Purchase –

MDCH will purchase new equipment only. The serial number of the device purchased must be maintained on file by the vendor for audit purposes. Shipping and handling fees relating to the SGD equipment are not separately reimbursed. Reimbursement includes the charges for the SGD and all approved components. The provider's charge for an SGD must be based on the usual and customary charge.

Reimbursement will be the lesser of the provider's charge and/or the Medicaid fee screen.

Rental - MDCH will rent equipment or devices when the purchase price of the device, including the component parts, exceeds \$9,000. Equipment will not be rented for a period of less than 30 days and may be rented for a maximum period of 90 days. The monthly rental reimbursement rate will be 1/10 of the maximum purchase reimbursement. The amount reimbursed for rental will be deducted from the total purchase price.

MPM, Medical Supplier, §2.39, April 1, 2010, pp. 68-70
(Emphasis supplied)

The testimony established that the Department denied the Appellant's request for a SGD first for inadequate documentation and next owing to cost.

The Department's exhibit, the Appellant's exhibits and the testimony of the Appellant's witness (██████████) demonstrated medical necessity for the requested device with evidence of mathematic and sentence construction ability via the Appellant's eye gaze testing on two occasions; one recorded, another unrecorded.

The Department's witness (██████████) testified that there was no dispute that the Appellant was eligible for a device under MPM criteria. White maintained that the Department simply found a cheaper product and that any delay encountered by the Appellant on PA was not the fault of the Department. This was disputed by the Appellant's representative.

The Department's position at hearing focused on observations of the Appellant during their requested video demonstration recording his ability or inability to utilize the requested SGD. The Department's testimony regarding their observations was allowed

on the promise to produce the video disc for the ALJ's post hearing review.¹ The record was left open until [REDACTED] to receive the video disc or a copy – but the disc was not provided.

Absent that exhibit the greater weight of the evidence supports the Appellant's position of having satisfied medical necessity and expressive ability to operate the requested SGD system - now made more urgent by the recent onset of frequent infections necessitating more exacting and frequent communication with his care givers. See Appellant's Exhibit #3.

Accordingly, the Appellant's witness testimony regarding the generic administration of the video exercise entered the record without rebuttal. See Department's Exhibit A, p. 15

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department improperly denied PA of the Dynavox SGD.

IT IS THEREFORE ORDERED that:

The Department's decision is REVERSED.

Dale Malewska
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:



Date Mailed: 6/2/2010

***** 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.

¹ At hearing the ALJ was told that "the disc" was in the Department's custody and that an original or copy would be provided. The Appellant had no objection.