

**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:

**Docket No. 2010-31861 PA
Case No. [REDACTED]**

[REDACTED],

Appellant

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]. The Appellant was represented by her mother, [REDACTED]. [REDACTED], appeals review officer, represented the Department. Her witness was [REDACTED], was [REDACTED], Medicaid analyst.

ISSUE

Did the Department properly deny Appellant's request for prior authorization (PA)?

FINDINGS OF FACT

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

- 1) At the time of hearing the Appellant is a [REDACTED] year-old Medicaid beneficiary. Appellant's Exhibit #1
- 2) The Appellant has been diagnosed with "cerebral palsy, dysphagia and speech delay". Department's Exhibit A, p. 10 and Appellant's Exhibit #1
- 3) On [REDACTED], the Department received and reviewed a request for PA from the [REDACTED] Methodist Hospital for speech therapy services for the Appellant, for the months of [REDACTED]. Department's Exhibit A, p. 7
- 4) The Department did not include a copy of the PA request in their evidence. See Exhibit A pp. 1 – 37

- 5) The Department sought additional information from ██████████ Rehabilitation Services. Department Exhibit A, p. 8
- 6) The requested additional information was received from therapist ██████████ on ██████████. Department's Exhibit A, pp. 8, 9
- 7) The PA was denied because the services were determined to be not medically necessary under Department policy. Department's Exhibit A, p. 6 and see Testimony of ██████████
- 8) On ██████████, the instant appeal was received by the State Office of Administrative Hearings and Rules (SOAHR). 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
Section, July 1, 2010, page 4.

Speech Therapy For CSHCS beneficiaries

[Therapy] must be reasonable, medically necessary and expected to result in an improvement and/or elimination of the stated problem within a reasonable amount of time (i.e., when treatment is due to a recent change in medical or functional status affecting speech, and the beneficiary would experience a reduction in medical or functional status without therapy).

Speech therapy services must be skilled (i.e., require the skills, knowledge and education of a certified SLP to assess the beneficiary for deficits, develop a treatment program and provide therapy). Interventions that could be provided by another practitioner (e.g., teacher, registered nurse [RN], licensed physical therapist [LPT], registered occupational therapist [OTR], family

member, or caregiver) would not be reimbursed as speech therapy by MDCH.

For beneficiaries of all ages, therapy is not covered:

- When provided by an independent SLP.
- For educational, vocational, social/emotional, or recreational purposes.
- If services are required to be provided by another public agency (e.g., PIHP/CMHSP provider, SBS).
- When intended to improve communication skills beyond premorbid levels (e.g., beyond the functional communication status prior to the onset of a new diagnosis or change in medical status).
- If it requires PA but is rendered before PA is approved.
- If it is habilitative. Habilitative treatment includes teaching someone communication skills for the first time without compensatory techniques or processes. This may include syntax or semantics (which are developmental) or articulation errors that are within the normal developmental process.
- If it is designed to facilitate the normal progression of development without compensatory techniques or processes.
- If continuation is maintenance in nature.
- If provided to meet developmental milestones.
- Medicare does not consider the service medically necessary.

MPM, Outpatient Therapies, Speech Therapy
§5.3, July 1, 2010, pp. 19, 20.

The Department's witness testified that therapist ████████'s written submission was "not objective" and did not satisfy Medicaid Provider Manual policy on medical necessity based on his treatment plan [submitted in ████████] where short term goals were projected for resolution in 1 – 3 months. Department's Exhibit A, p. 34

Furthermore, she added that services provided must be skilled. She said that the Appellant's goals were not medical goals and would be required to be provided by other public agencies. See Testimony of ████████.

Department witness ████████ also testified that the proposed plan for speech therapy was not covered owing to its habilitative nature and because it facilitated normal progression without compensatory techniques or processes. She also discounted therapist ████████'s written reference to the ████████ facility as the appropriate site for therapy owing to its capability to manipulate the Appellant's attention. Department's Exhibit A, at page 9

The Department denied the Appellant's request for PA of additional speech therapy determining that it was not medically necessary and that the request lacked adequate objective documentation for medical reviewers to determine if the proposed plan met Department policy.

The Appellant's representative said that the Appellant is receiving therapy through the school system – including a [proposed] schedule for the summer months.

The Appellant must prove, by a preponderance of evidence, that she met the criteria for Medicaid-covered speech therapy. The Appellant failed to provide credible testimony or supporting evidence that her daughter's speech therapy needs were medically based.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly denied the Appellant's request for continued PA of speech therapy.

IT IS THEREFORE ORDERED that:

The Department's decision is **AFFIRMED**.

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

cc: [REDACTED]

Date Mailed: 7/21/2010

***** 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.