STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P.O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

[redacted],

Appellant
_____/

Docket No. 2010-36938 QHP
[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.,* following the Appellant's request for a hearing.

After due notice, a hearing was held on [redacted]. The Appellant, [redacted], appeared on her own behalf. [redacted], Lead Appeals Coordinator, represented [redacted] of Michigan, the Medicaid Health Plan (MHP). [redacted], Medical Director, appeared as a witness for the MHP.

ISSUE

Did the MHP properly deny the Appellant's request for a replacement power scooter?

FINDINGS OF FACT

Based upon the competent, material, and substantial evidence presented, I find, as material fact:

1. The Appellant is a [redacted] Medicaid beneficiary, who is currently enrolled in the MHP [redacted] Healthcare of Michigan. (See Exhibits 1 and 2)

2. On [redacted], the MHP received a request for a replacement power scooter for Appellant because her current scooter could not be repaired. (Exhibit 1, pages 11-13)

3. On [redacted], the MHP requested additional information from the medical supplier regarding the reason for replacement of the scooter and regarding a physical therapy evaluation to determine the Appellant's mobility status. (Exhibit 1, page 3)

4. On [redacted], the medical supplier advised the MHP that it had found no defect in the scooter and it did not have a recent physical therapy evaluation for the Appellant. (Exhibit 1, page 3)

5. On [redacted], the MHP sent the Appellant a denial notice, stating that her request for a replacement power scooter was not authorized because there was no evidence to support that her current power scooter was not operating. (Exhibit 1, pages 4-5)

6. The Appellant filed an internal appeal with the MHP, which was denied on [redacted]. The appeal was denied for the following reasons: (1) there was no documentation to support that the Appellant's current scooter was not working; (2) there was no physical therapy evaluation to show that the Appellant is not able to propel a manual wheelchair; and (3) the Appellant can walk and only uses the scooter for travel outside of the home. (Exhibit 1, pages 6-7)

7. The Appellant requested a formal, administrative hearing contesting the denial on [redacted]. (See Exhibit 1, page 1)

8. On the day of the hearing, the Appellant provided the MHP with a [redacted] physical therapy evaluation. (Testimony of [redacted] Testimony of [redacted])

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.

On May 30, 1997, the Department received approval from the Health Care Financing Administration, U.S. Department of Health and Human Services, allowing Michigan to restrict Medicaid beneficiaries' choice to obtain medical services only from specified MHPs.

The Respondent is one of those MHPs.

The covered services that the Contractor has available

for enrollees must include, at a minimum, the covered services listed below (List omitted by Administrative Law Judge). The Contractor may limit services to those which are medically necessary and appropriate, and which conform to professionally accepted standards of care. The Contractor must operate consistent with all applicable Medicaid provider manuals and publications for coverages and limitations. If new services are added to the Michigan Medicaid Program, or if services are expanded, eliminated, or otherwise changed, the Contractor must implement the changes consistent with State direction in accordance with the provisions of Contract Section 2.024.

Section 1.022(E)(1), Covered Services.
MDCH contract (Contract) with the Medicaid Health Plans,
October 1, 2009.

(1) The major components of the Contractor's utilization management (UM) program must encompass, at a minimum, the following:

(a) Written policies with review decision criteria and procedures that conform to managed health care industry standards and processes.
(b) A formal utilization review committee directed by the Contractor's medical director to oversee the utilization review process.
(c) Sufficient resources to regularly review the effectiveness of the utilization review process and to make changes to the process as needed.
(d) An annual review and reporting of utilization review activities and outcomes/interventions from the review.
(e) The Um activities of the Contractor must be integrated with the Contractor's QAPI program.

(2) Prior Approval Policy and Procedure
The Contractor must establish and use a written prior approval policy and procedure for UM purposes. The Contractor may not use such policies and procedures to avoid providing medically necessary services within the coverages established under the Contract. The policy must ensure that the review criteria for authorization decisions are applied

> consistently and require that the reviewer consult with the requesting provider when appropriate. The policy must also require that UM decisions be made by a health care professional who has appropriate clinical expertise regarding the service under review.
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> *Section 1.022(AA), Utilization Management, Contract, October 1, 2009.*

As stated in the Department-MHP contract language above, a MHP "must operate consistent with all applicable Medicaid Provider Manuals and publications for coverages and limitations." The pertinent sections of the Michigan Medicaid Provider Manual (MPM) state as follows:

1.8 DURABLE MEDICAL EQUIPMENT

1.8.C Repairs and Replacement Parts

The replacement of a DME item will be considered when a significant change in the patient's condition has occurred or the cost of the equipment repair is greater than replacement. If the DME item cannot be restored to a serviceable condition and there has been no change in the medical condition of the beneficiary, MDCH will consider replacement if the existing equipment meets coverage criteria or was purchased by the program. In these cases, a current prescription will meet documentation requirements for the equipment. If there has been a change in the medical condition that would reflect a change in equipment need, then all documentation requirements in the Coverage Conditions and Requirements Section of this chapter apply. Replacement of DME for youth will be evaluated on an individual basis due to the expected growth pattern.

* * *

2.47 WHEELCHAIRS, PEDIATRIC MOBILITY ITEMS AND SEATING SYSTEMS

Standard of Coverage – Wheelchairs

Power Wheelchairs or Power Operated Vehicles (POV) may be covered if the beneficiary demonstrates all of the following:

- Lacks ability to propel a manual wheelchair or has a medical condition that would be compromised by

propelling a manual one for at least 60 feet over hard, smooth, or carpeted surfaces.

- Requires the use of a wheelchair for at least four hours throughout the day.

- Able to safely control wheelchair through doorways and over thresholds up to one-and-one-half inches (e.g., the beneficiary's cognitive and physical abilities to safely operate the wheelchair).

MDCH may consider coverage of a POV, including custom or modified seating, rather than a more expensive power wheelchair if the beneficiary has sufficient trunk control and balance necessary to safely operate the device.

Department of Community Health,
Medicaid Provider Manual, Medical Supplier
Version Date: January 2, 2010, Pages 11-12, 80

The MHP Medical Director explained that the replacement power scooter was denied in this case because there was no objective evidence of a defect in the Appellant's current scooter.

The Appellant testified that her scooter needs to be replaced because it accelerates and stops on its own. She stated that her doctor has witnessed her scooter do this, and she has even gone through a window at her apartment building because she has no control over the scooter. She also stated that she has been propelled into traffic by the scooter. (Exhibits 2 and 3) The Appellant states that this has been going on daily for approximately six months. The Appellant acknowledged that the medical supplier has been unable to identify a defect in the scooter. However, she believes that it may be because she is not on the scooter when it has been inspected, and the repairman weighs significantly less than the Appellant.

The Appellant further testified that she is not able to manually propel a wheelchair because of her spinal stenosis. She also stated that because of her size, any manual wheelchair would be too large to move about in her apartment. She stated that she can only walk for short distances and that she was cannot stand for more than 10 minutes at a time.

While this Administrative Law Judge sympathizes with the Appellant's circumstances, the MHP must rely on the information provided with the request to make its determination. Here, the MHP demonstrated that, based on the submitted information, the Appellant did not meet the criteria for approval of a replacement scooter because no defect was identified in her current scooter. As such, the MHP's denial was proper.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the MHP properly denied the Appellant's request for a replacement scooter. However, the Appellant may submit a new request at any time.

IT IS THEREFORE ORDERED that:

The Medicaid Health Plan's decision is AFFIRMED.

Kristin M. Heyse
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: 8/26/2010

***** 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.