STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH
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IN THE MATTER OF:

[redacted],

Appellant
_____/

Docket No. 2010-43948 QHP
Case No. 28613083

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ) 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 August 25, 2010. The Appellant was represented by his mother, Cherona Herriff. Lauri Omans, Grievance Supervisor, represented the Medicaid Health Plan (MHP), Physicians Health Plan of Mid-Michigan. Barbara Jepson-Taylor, RN/Quality Review Specialist, appeared as a witness for the MHP.

ISSUE

Did the MHP properly deny the Appellant's request for continued occupational therapy?

FINDINGS OF FACT

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

1. Appellant is a six-year-old Medicaid beneficiary, who has been diagnosed with seizure disorder and coordination disorder. (Exhibit 1, page 6)

2. The Appellant has participated in occupational therapy (OT) since March 2010. (Exhibit 1, page 6)

3. His most recent evaluation for OT was at Sparrow Pediatric Rehabilitation on March 4, 2010. (Exhibit 1, pages13-15)

4. The evaluation revealed that the Appellant has delays in his fine motor coordination and with activities of daily living (ADLs). (Exhibit 1, page 15)

5. The OT plan of treatment states that the following skills should be worked on one to two times per week for a three-month period: fine motor coordination, ADLs, visual motor integration skills, visual perception skills, bilateral coordination, and HEP. (Exhibit 1, page 12)

6. A request for prior authorization for therapy 1 time per week for 13 weeks was submitted to the MHP on or about June 24, 2010. (Exhibit 1, page 6)

7. On June 24, 2010, the MHP sent the Appellant a denial notice, indicating that the request for continued OT had been denied. The Notice specifically stated that the Appellant's coverage did not include "continued occupational therapy (OT) when functional improvement has not occurred." (Exhibit 1, pages 16-18)

8. On July 22, 2010, the Department received the Appellant's Request for Hearing. (Exhibit 1, page 19)

9. The MHP treated the Appellant's hearing request as an internal appeal. That appeal was denied on August 23, 2010. (Exhibit 1, pages 22-25)

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 Michigan Department of Community Health (Department or MDCH) 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 Medicaid Health Plans.

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.

Section 1.022(AA)(1) and (2),
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 are as follows:

> **SECTION 5 – STANDARDS OF COVERAGE AND SERVICE LIMITATIONS**
>
> **5.1 OCCUPATIONAL THERAPY**
> MDCH uses the terms Occupational Therapy, OT, and therapy interchangeably. OT is covered when furnished by a Medicaid-enrolled outpatient therapy provider when performed by:
>
> - An occupational therapist currently registered in Michigan (OTR);
> - A certified occupational therapy assistant (COTA) under the supervision of an OTR (i.e., the COTA's services must follow the evaluation and treatment plan developed by the OTR, and the OTR must supervise and monitor the COTA's performance with continuous assessment of the beneficiary's progress). All documentation must be reviewed and signed by the appropriate supervising OTR; or
> - A student completing his clinical affiliation under the direct supervision of (i.e., in the presence of) an OTR. All documentation must be reviewed and signed by the appropriate supervising OTR.
>
> OT is considered an all-inclusive charge and MDCH does not reimburse for a clinic room charge in addition to OT services unless it is unrelated. MDCH expects OTR's and COTA's to utilize the most ethically appropriate therapy within their scope of practice as defined by state law and/or the appropriate national professional association. OT must be medically necessary, reasonable and required to:
>
> - Return the beneficiary to the functional level prior to illness or disability;
> - Return the beneficiary to a functional level that is appropriate to a stable medical status; or
> - Prevent a reduction in medical or functional status had the therapy not been provided.
>
> **For CSHCS beneficiaries**
> OT must be directly related to the CSHCS-eligible diagnosis(es) and prescribed by the specialty physician who is overseeing care.

For beneficiaries 21 years of age and older
OT is only covered if it can be reasonably expected to result in a meaningful improvement in the beneficiary's ability to perform functional day-to-day activities that are significant in the beneficiary's life roles despite impairments, activity limitations or participation restrictions.

MDCH anticipates OT will result in a functional improvement that is significant to the beneficiary's ability to perform appropriate daily living tasks (per beneficiary's chronological, developmental, or functional status). Functional improvements must be achieved in a reasonable amount of time and must be maintainable. MDCH does not cover therapy that does not have an impact on the beneficiary's ability to perform age-appropriate tasks.

OT must be skilled (i.e., require the skills, knowledge and education of an OTR). MDCH does not cover interventions provided by another practitioner (e.g., teacher, registered nurse [RN], licensed physical therapist [LPT], family member, or caregiver).

MDCH anticipates OT will result in a functional improvement that is significant to the beneficiary's ability to perform appropriate daily living tasks (per beneficiary's chronological, developmental, or functional status). Functional improvements must be achieved in a reasonable amount of time and must be maintainable. MDCH does not cover therapy that does not have an impact on the beneficiary's ability to perform age-appropriate tasks.

OT must be skilled (i.e., require the skills, knowledge and education of an OTR). MDCH does not cover interventions provided by another practitioner (e.g., teacher, registered nurse [RN], licensed physical therapist [LPT], family member, or caregiver).

OT may be covered for one or more of the following:

- Therapeutic use of occupations*.
- Adaptation of environments and processes to enhance functional performance in occupations*.
- Graded tasks (performance components) in activities as prerequisites to an engagement in occupations*.
- Design, fabrication, application, or training in the use of assistive technology or orthotic devices.

- Skilled services that are designed to set up, train, monitor, and modify a maintenance or prevention program to be carried out by family or caregivers.

Routine provision of the maintenance/prevention program is not a covered OT service.

* Occupations are goal-directed activities that extend over time (i.e., performed repeatedly), are meaningful to the performer, and involve multiple steps or tasks. For example, doing dishes is a repeated task. Buying dishes happens once; therefore, does not extend over time and is not a repeated task.

OT is not covered for the following:

- When provided by an independent OTR**.
- For educational, vocational, or recreational purposes.
- If services are required to be provided by another public agency (e.g., community mental health services provider, school-based services).
- If therapy requires PA and service is rendered before PA is approved.
- If therapy is habilitative. Habilitative treatment includes teaching someone how to perform a task (i.e., daily living skill) for the first time without compensatory techniques or processes. This may include teaching a child normal dressing techniques or cooking skills to an adult who has not performed meal preparation tasks in the past.
- If therapy is designed to facilitate the normal progression of development without compensatory techniques or processes.
- For development of perceptual motor skills and sensory integrative functions to follow a normal sequence. If the beneficiary exhibits severe pathology in the perception of, or response to, sensory input to the extent that it significantly limits the ability to function, OT may be covered.
- Continuation of therapy that is maintenance in nature.

** An independent OTR may enroll in Medicaid if he provides Medicare-covered therapy and intends to bill Medicaid for Medicare coinsurance and/or deductible only.

Department of Community Health,
Medicaid Provider Manual, Outpatient Therapy Section
Version Date: April 1, 2010, Pages 7-8
(Emphasis added by the ALJ)

The MHP witness testified that she reviewed a June 2010 OT progress report to determine if the there was any functional improvement during the three months of OT that the Appellant had already received. She testified that the report noted that there was no significant change in the Appellant's condition during that three-month period and that the Appellant only met one of the five goals that were established for the Appellant. Therefore, because there was no indication of functional improvement from the OT, the Appellant's request for continued OT was denied.

The Appellant's mother disagrees with the denial. She testified that the Appellant is only functioning at the level of a three-and-one-half-month-old child and that he needs OT because he is so far behind in his development. She stated that he cannot even hold a pencil because of his weak muscles. She further testified that the Appellant did not even start OT until May 2010 and that he is showing improvement.

After reviewing policy and the record evidence in this case, this ALJ concludes that the MHP did not wrongfully deny the requested therapy. That does not mean that the Appellant would not benefit from the therapy or that he is not deserving of it, but policy is clear that the therapy must result in functional improvement and there is no documentation here to support that. Accordingly, this ALJ is left with no other choice but to uphold the denial of continued OT at this time. However, the Appellant may re-apply at any time.

DECISION AND ORDER

The ALJ, based on the above findings of fact and conclusions of law, finds that the MHP properly denied the Appellant's request for continued occupational therapy.

IT IS THEREFORE ORDERED that:

The MHP's decision is AFFIRMED.

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

cc: [redacted]

Date Mailed: 10/19/2010

***** 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 mailing date of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the mailing date of the rehearing decision.