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. 2010-47779 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], father and Guardian, appeared as the Appellant's representative. [redacted], Appeals Review Officer, represented the Department. [redacted], Medicaid Utilization Analyst, appeared as a witness for the Department.

ISSUE

Did the Department properly deny the Appellant's prior authorization request for ongoing occupational therapy and physical therapy?

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 suffered a traumatic brain injury. (Exhibit 1, page 11)

2. The Appellant was authorized to receive occupational therapy and physical therapy services through [redacted]. (Exhibit 2, pages 17 and 19)

3. On [redacted], the Department received prior approval-requests for continuing occupational therapy and physical therapy services for the months of [redacted]. The indicated short and long term

goals were to maintain current range of motion and skin integrity as well as to prevent any further contractures. (Exhibit 1, pages 2 and 10-14)

4. Routine maintenance therapy consists of repetitive services required to maintain function. Medicaid policy only allows for coverage of non-routine therapies for beneficiaries in a nursing facility. (Medicaid Provider Manual, Nursing Facility Coverages Section, 10.36 Therapies, July 1, 2010, page 56)

5. Covered occupational therapy services must be active and restorative. Covered physical therapy services must be active, restorative, or specialized maintenance physical therapy programs. (Medicaid Provider Manual, Nursing Facility Coverages Section, 10.36A Occupational Therapy and 10.36 B Physical Therapy, July 1, 2010, pages 56-57)

6. On [redacted], the Department denied the prior authorization requests because routine maintenance therapy is included in the per diem and are not considered skilled. (Exhibit 1, pages 6-9)

7. On [redacted], the State Office of Administrative Hearings and Rules received the hearing request filed on the Appellant's behalf. (Department Exhibit 1, page 4)

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 Nursing Facility Coverages section of the Medicaid Provider Manual addresses coverage of therapies:

> **10.36 THERAPIES [RE-NUMBERED 7/1/10]**
>
> Nursing facilities must provide or obtain specialized rehabilitative services if required by the beneficiary's plan of care.
>
> Routine maintenance therapy consists of the repetitive services required to maintain function. The development of the therapy and treatment are included in the per diem rate. Such therapy does not require the therapist to perform the service, nor does it require complex and sophisticated procedures.

Non-routine occupational therapy (OT), physical therapy (PT) and speech/language/pathology (ST) are ancillary services that are covered if prior authorization is obtained and the following conditions are met:

- The therapy must be billed by the facility;
- There must be a written order by the attending physician/licensed physician's assistant for each calendar month of therapy; and
- The written orders must be signed by the attending physician/licensed physician's assistant and retained in the beneficiary's medical record.

Non-routine ancillary therapy is therapy that requires the skills of qualified technical or professional health personnel such as physical therapists, occupational therapists, speech pathologists or audiologists, and is directly provided by or under the general supervision of these skilled personnel to assure the safety of the beneficiary and achieve the medically desired results as ordered by the beneficiary's physician.

Federal regulations require the facility to have a valid contract with the OT, PT, or ST provider. A valid contract allows the facility to retain professional and administrative control over the services provided. Therefore, an agreement that stipulates only the use of facility space does not constitute a valid contract.

If Medicaid funds have inappropriately been paid to a facility for OT, PT, or ST services when a facility did not possess a valid contract, the funds may be recovered by gross adjustment or at the time of cost settlement, as appropriate.

The following clarifies the professional responsibilities of the nursing facility, the physician, and the therapist in the provision of OT, PT or ST services for Medicaid beneficiaries.

- The facility has administrative and professional responsibility for the management of the total health care needs of the beneficiary as outlined in the plan of care. The facility must assure that appropriate OT, PT, or ST services are available to the beneficiary as needed. In situations where the therapist is not an employee of the facility, the facility must establish a valid contract with a therapist/speech pathologist who meets applicable licensure/certification/accreditation requirements.

- The attending physician is responsible for determining the medical necessity and appropriateness for services and preparing the written orders for OT, PT or ST evaluation and treatment. These are reviewed and approved/disapproved by the MDCH Program Review Division.
- The therapists are responsible for evaluating the beneficiary's needs; developing a written plan of treatment, including goals and objectives; and providing or overseeing the appropriate services. A copy of the treatment plan must be retained in the beneficiary's medical record.

The facility's responsibilities, as described above, are not meant to conflict in any way with the professional responsibilities of OTs, PTs or STs in the evaluation and treatment of the beneficiary.

The cost of supplies and equipment (e.g., plate guards) used as part of the therapy program is included in the reimbursement for the therapy/speech pathology.

Therapies provided to nursing facility beneficiaries outside the nursing facility premises must be provided in the outpatient department of a general hospital or medical care facility.

Therapies provided to county medical care facility, hospital long term care unit or hospital swing bed beneficiaries outside their respective facilities must be provided in the outpatient department of a general hospital. ST may also be provided by a hearing center. Prior authorization must be obtained by the facility regardless of where the service is to be provided.

Note: Therapy provided by a physician (MD or DO) is not a covered benefit for beneficiaries in a nursing facility.

10.36.A. OCCUPATIONAL THERAPY (OT) [RE-NUMBERED 7/1/10]

Occupational therapy (OT) must be active and restorative. A registered occupational therapist or a certified occupational therapy assistant must render the services. If the assistant renders the service, the assistant must be under the supervision of the therapist.

The following are examples of occupational therapy services that may be covered by Medicaid:

- Training in activities of daily living;
- Fabrication of adaptive equipment;
- Perceptual motor training;

- Splinting;
- Testing;
- Therapeutic exercises; and
- Prosthetic and orthotic training.

OT services that are provided and billed simultaneous with PT are not covered. Also, diversional OT, reality orientation, and restorative nursing functions are considered part of the per diem rate, and are not separately reimbursable.

10.36.B. PHYSICAL THERAPY (PT) [RE-NUMBERED 7/1/10]

Active, restorative, or specialized maintenance physical therapy (PT) programs, as explained below, are benefits of the Medicaid Program. There must be the expectation that the beneficiary's condition will improve significantly in a reasonable and generally predictable period of time.

A licensed physical therapist (temporary permit is acceptable), physical therapy assistant, or physical therapy aide must provide the services. If the assistant or aide renders the service, they must be under the supervision of the therapist.

The following are examples of restorative PT services which may be covered by Medicaid:

- Hot pack, ice pack, infrared treatment, or whirlpool bath is covered when provided as a prerequisite to a skilled physical therapy procedure;
- Gait training is covered when provided to a beneficiary whose ability to walk has been impaired by neurological, muscular, or skeletal abnormality;
- Prosthetic and orthotic training is covered when instructing the beneficiary in using the prosthetic or orthotic device; and
- Range of motion exercises are covered when provided as part of the treatment of a specific disability which has resulted in a loss or restriction of mobility.

For specialized maintenance physical therapy, the therapist's initial evaluation of the beneficiary's needs and designing of the program are covered. The program must be appropriate to the beneficiary's capacity, tolerance, and treatment objectives. The instructions to the beneficiary or to

> other members of the health team (e.g., nursing personnel) in carrying out such an individualized treatment plan and infrequent reevaluations, as may be required, are also covered.
>
> *MDCH Medicaid Provider Manual,*
> *Nursing Facility Coverages Section,*
> July 1, 2010, pages 56-57.
> (Exhibit 1, pages 15-17)

In the present case, the [redacted] prior authorization requests did not indicate that active, restorative or specialized maintenance occupational or physical therapy services were requested. Rather, the listed short and long term goals of maintaining current range of motion and skin integrity as well as to prevent any further contractures indicate that the requested services were routine maintenance therapy. Based on the information provided on the [redacted] prior authorization requests, the Appellant did not meet the criteria for Medicaid coverage of occupational or physical therapy services. Accordingly, the Department's denial must be upheld.

The Appellant's father indicated that the prior authorization request forms did not correctly or adequately describe the services the Appellant needs. If he has not already done so, the Appellant can submit new prior authorization requests for the needed therapy services with more detailed and accurate information.

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 [redacted] prior authorization requests for occupational therapy and physical therapy services based upon the submitted information.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

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

[redacted]
Docket No. 2010-47779 PA
Decision & Order

cc: [redacted]

Date Mailed: 11/4/2010

***** 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.