

**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. 2010-52492 QHP
[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.*, following the Appellant's request for a hearing.

After due notice, a hearing was held on [REDACTED]. [REDACTED], the Appellant's guardian, represented the Appellant. [REDACTED], Director of Member Services, represented the [REDACTED] the Medicaid Health Plan (MHP). [REDACTED], Manager of Utilization Management, and [REDACTED] [REDACTED] Pediatrician/Medical Director, appeared as witnesses for the MHP.

ISSUE

Did the MHP properly deny the Appellant's request for an alternative listening device?

FINDINGS OF FACT

Based on the competent, material, and substantial evidence presented, the Administrative Law Judge finds, as material fact:

1. The Appellant is currently enrolled in the Respondent MHP, [REDACTED]
2. The Appellant is a [REDACTED] Medicaid beneficiary, who suffers from hearing loss as a result of being born without an ear on his right side. (Testimony of [REDACTED]; Testimony of [REDACTED])

3. On [REDACTED], the MHP received a request for an alternative listening device from Lightspeed Technologies, Inc. Submitted with the request was supporting documentation from the Appellant's audiologist, who specifically requested the device for use in the classroom. (Exhibit 1, pages 8-11)
4. On [REDACTED], the MHP sent the Appellant a denial notice, stating that his request for an alternative listening device was denied because it is not covered benefit. (Exhibit 1, pages 13-16) Specifically, the Appellant is not over [REDACTED] and the device is being requested for use in the classroom. (Testimony of [REDACTED])
5. The Appellant requested a formal administrative hearing contesting the denial on [REDACTED]. (Exhibit 1, pages 6-7)
6. The Appellant's internal appeal of the denial was denied on [REDACTED], [REDACTED]. (Exhibit 1, pages 17-19)

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.

*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 section of the Michigan Medicaid Provider Manual (MPM) states:

2.11 ALTERNATIVE LISTENING DEVICES

An Alternative Listening Device (ALD) is defined as a special purpose electro-acoustic device designed to enhance receptive communication.

2.11.A. STANDARDS OF COVERAGE

ALDs are a benefit for beneficiaries **age 21 or over** under the following conditions:

- No hearing aid has been dispensed to the beneficiary within three years.
- No ADL has been dispensed to the beneficiary within three years.
- The beneficiary is residing in a nursing facility.
- Patient management of a personal hearing aid is considered unrealistic and/or the frequency-specific audiometric data cannot be obtained in each ear.
- The ALD is provided for situations involving one-on-one conversation.
- The ALD is not designed primarily for television or telephone amplification, theater or classroom use.

*Department of Community Health,
Medicaid Provider Manual, Hearing Aid Dealers
Version Date: July 1, 2010, page 21*

The MHP’s Medical Director explained that the alternative listening device in this case was denied for three reasons. First, the Appellant does not qualify for an alternative listening device under the Medicaid Provider Manual because he is under 21 years of age and the device is being requested for classroom use. Second, the device is not medically necessary because the Appellant is able to hear on his left side, and if positioned properly in the classroom, he should be able to hear adequately. Third, the [REDACTED]

Michigan's 2010 Member Handbook explicitly prohibits coverage for services that are provided by the school district. Here, the school has provided an alternative listening device for classroom use.

The Appellant's representative testified that she understands that policy prohibits prior authorization for the alternative listening device. However, she is asking that an exception be made in this case. She explained that the Appellant has a device at school, but it is not working for him, and his grades have suffered because of it. She explained that the Appellant has used the requested device successfully in the past, but it was given to another student. She further stated that if the school district pays for the device, then it would not be specifically for the Appellant's use. But the requested device, if paid for by the MHP, would be for the Appellant's use only, and he could use it for the rest of his school days.

While this Administrative Law Judge sympathizes with the Appellant's circumstances, the MHP's denial must be upheld. Policy in this case is clear: an alternative listening device cannot be approved for a beneficiary under the age of 21 or for classroom use. And this Administrative Law Judge has no authority to "make decisions on constitutional grounds, overrule statutes, overrule promulgated regulation[s] or overrule or make exceptions to Department policy." (Delegation of Hearing Authority, effective August 29, 2006)

DECISION AND ORDER

The ALJ, based on the above findings of fact and conclusions of law, decides that the MHP properly denied the Appellant's request for an alternative listening device.

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: 

Date Mailed: 11/29/2010

***** 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.