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. 2010-55797 PA
Case No. 11340266

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], appeared as the Appellant's representative. [redacted], represented the Department. [redacted], appeared as a witness for the Department.

ISSUE

Did the Department properly deny the Appellant's prior authorization request for a Smartvest airway clearance system?

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 [redacted] Medicaid beneficiary who has been diagnosed with [redacted]. (Exhibit 1, pages 7-12)

2. On [redacted], the Department received a prior approval-request for [redacted] for the Appellant. (Department Exhibit 1, pages 7-12)

3. The Appellant still has [redacted] and continues to use it twice daily. (Exhibit 1, page 8)

4. The Appellant is requesting a new vest because the updated functions are more effective and so she can use the vest independently. ([redacted]

Testimony)

5. On [redacted], the Department denied the prior authorization request because the new vest was not determined to be medically necessary or cost effective as the Appellant already owns a functional unit. (Department Exhibit 1, pages 5-6)

6. On [redacted], the State Office of Administrative Hearings and Rules received the hearing request filed on the Appellant's behalf. (Department Exhibit 1, pages 3-4)

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 applicable Standards of Coverage can be found in the Medical Supplier section of the Medicaid Provider Manual:

2.15 HIGH FREQUENCY CHEST WALL OSCILLATION DEVICE

Definition
A high frequency chest wall oscillation (HFCWO) system is an airway clearance device consisting of an inflatable vest connected by two tubes to a small air-pulse generator that is easy to transport. The air-pulse generator rapidly inflates and deflates the vest, gently compressing and releasing the chest wall to create mini-coughs that dislodge mucus from the bronchial walls, increase mobilization, and facilitates it along toward central airways.

Standards of Coverage
A HFCWO system may be covered up to four months if both of the following apply:

- Diagnosis of Cystic Fibrosis, and
- All other treatment modalities have not been effective.

Documentation
Documentation must be less than 180 days old and include:

- Diagnosis pertaining to the need for this unit.
- Severity of condition (e.g., frequency of hospitalizations, pulmonary function tests, etc.).
- Current treatment modalities and others already tried.

- Plan of care by the attending Cystic Fibrosis (CF) Center specialist substantiating need for the device is **required under the CSHCS Program**.
- For continuation beyond the initial four months, the following information must be provided:
  - Documentation of client compliance through the review of equipment use logs; and
  - Medical statement from a CF Center Specialist substantiating the continued effectiveness of the vest is **required under the CSHCS program.**

PA Requirements
PA is required for all requests.

Payment Rules
The HFCWO system chest compression generator system is considered a **capped rental** item and is inclusive of the following:

- All accessories necessary to use the equipment except for the vest itself. This may be separately reimbursed during the initial rental period.
- Education on the proper use and care of the equipment.
- Routine servicing and all necessary repairs and replacements to make the equipment functional.

MDCH Medicaid Provider Manual,
Medical Supplier Section 2.15,
July 1, 2010, pages 35-36.

In the present case, the Department is not denying the Appellant's request because of the standards of coverage. Rather, they determined that a new vest is not medically necessary because she already has a functional unit. The Medicaid Provider Manual policy also states:

1.5 Medical Necessity [Changes Made 7/1/10]

Medical devices **(revised relative to bulletin MSA 10-16)** are covered if they are the most cost-effective treatment available and meet the Standards of Coverage stated in the Coverage Conditions and Requirements Section of this chapter.

The medical record must contain sufficient documentation of the beneficiary's medical condition to substantiate the necessity for the type and quantity of items ordered and for the frequency of use or replacement. The information should include the beneficiary's diagnosis, medical condition, and other pertinent information including, but not limited to, duration of the condition, clinical course, prognosis, nature and extent of functional limitations, other therapeutic interventions and

> results, and past experience with related items. Neither a physician's order nor a certificate of medical necessity by itself provides sufficient documentation of medical necessity, even though it is signed by the treating physician. Information in the medical record must support the item's medical necessity and substantiate that the medical device needed is the most appropriate economic alternative that meets MDCH standards of coverage. **(added relative to bulletin MSA 10-16)**
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> Medical equipment may be determined to be medically necessary when all of the following apply: **(revised relative to bulletin MSA 10-16)**
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> - Within applicable federal and state laws, rules, regulations, and MDCH promulgated policies.
> - Medically appropriate and necessary to treat a specific medical diagnosis or medical condition, or functional need, and is an integral part of the nursing facility daily plan of care or is required for the community residential setting. **(added relative to bulletin MSA 10-16)**
> - Within accepted medical standards; practice guidelines related to type, frequency, and duration of treatment; and within scope of current medical practice.
> - Inappropriate to use a nonmedical item.
> - The most cost effective treatment available.
> - It is ordered by the treating physician, and clinical documentation from the medical record supports the medical necessity for the request (as described above) and substantiates the physician's order.
> - It meets the standards of coverage published by MDCH.
> - It meets the definition of Durable Medical Equipment (DME), as defined in the Program Overview section of this chapter.
> - Its use meets FDA and manufacturer indications. **(added relative to bulletin MSA 10-16)**
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> *MDCH Medicaid Provider Manual,*
> *Medical Supplier Section 1.5,*
> *July 1, 2010, pages 4-5.*

The Department determined that the submitted medical documentation did not support medical necessity for the new vest or establish that this was the most cost effective. Specifically there was no documentation that the Appellant's current unit was not functional.

The Appellant's [redacted] disagrees with the Department's denial and explained that the Appellant has been very diligent in her care, using her current unit twice per day and more often if she is ill. By doing so, she has avoided being hospitalized in the past four years. The Appellant's [redacted] testified that the Appellant is not able to lift her current unit independently, making transporting it down state for quarterly overnight trips to [redacted]

[redacted] for medical appointments or to visit family difficult. She explained that the Appellant will need to be able to continue her treatments with a vest she can handle independently as she is reaching the age to drive, and in a few years will be leaving home to attend college.

The Appellant's [redacted] raised valid issues and concerns. However, this ALJ is limited to reviewing the action taken by the Department under the applicable Medicaid policy. The Appellant's current unit is functional and she is still a few years from leaving home to attend college when being able to transport a vest independently will become more important. Accordingly, a new vest can not be considered medically necessary or cost effective at this time. This does not mean that the Appellant would not benefit from the requested unit or that she is not deserving of it, but only that the Medicaid policy does not allow for coverage in the Appellant's circumstances. Accordingly, the Department's denial must be upheld.

The Appellant's [redacted] testimony indicated that the medical supply company has already provided the Appellant with the new vest, but the cost of the upgrade has not been paid yet. Under the prior authorization policy in the Medicaid Provider Manual, a provider may not charge the Appellant for failure to provide sufficient documentation to support coverage or failure to obtain prior authorization unless they have documentation that the Appellant waived her right to prior authorization:

> **1.11 CHARGING THE BENEFICIARY**
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> The provider may not charge the beneficiary for failure to provide sufficient documentation to support coverage or failure to obtain PA. The provider may charge the beneficiary if the beneficiary waives his right to PA. The provider must maintain on file a document that demonstrates that the beneficiary knew and understood that the waiver of PA would result in the beneficiary's responsibility for payment. In addition, the provider may not charge the beneficiary any co-payments (unless permitted by Medicaid) or charges above the Medicaid allowable amount.
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> *MDCH Medicaid Provider Manual,*
> *Medical Supplier Section 1.11,*
> *July 1, 2010, page 18.*

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 a Smartvest airway clearance system.

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

cc: [redacted]

Date Mailed: 12/14/2010

***** 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.