STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
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. 2011-32534 PA
Case No [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], husband, appeared as the Appellant's representative. [redacted] MI Choice Waiver Program, and [redacted], appeared as witnesses for the Appellant.

[redacted] Appeals Review Manager, 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 speech generating device?

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] year old Medicaid beneficiary who has been diagnosed with cerebrovascular accident (CVA) and aphasia. (Exhibit 1, page 3)

2. On [redacted], the Department received a prior approval-request for a speech generating device for the Appellant from [redacted]. (Exhibit 1, pages 41-50)

3. On [redacted] the Department sent a request for additional information to the Appellant's provider. The Department indicated an evaluation, including test used and baseline receptive test data, must be submitted as well as consideration of and ruling out all available economic alternatives, which may include those in addition to [redacted] equipment. (Exhibit 1, pages 7-8)

4. On [redacted], a Speech-Language Pathologist sent additional information to the Department including a [redacted] evaluation and response regarding economic alternatives. The letter also recommended a newer model of speech generating device for the Appellant. (Exhibit 1, pages 9-10)

5. On [redacted] faxed additional information to the Department regarding the Appellant's prior authorization request. (Exhibit 1, page 32)

6. On [redacted] the Department sent a request for additional information to the Appellant's provider. The Department indicated that objective criteria must be provided per published policy. The Department also requested completed testing, occupational and physical therapy reports on the Appellant's ability to access the system. Highlighted policy was attached indicating what additional information was required. (Exhibit 1, pages 4-5)

7. On [redacted], a speech-language pathologist provided a letter regarding the evaluation, testing and the Appellant's impairments and ability to use the device. (Exhibit 1, page 6)

8. On [redacted] faxed additional documentation for the Appellant's prior authorization request. (Exhibit 1, pages 3-19)

9. Medicaid policy requires extensive documentation for approval of a speech generating device. (Medicaid Provider Manual, Medical Supplier Section, 2.39 Speech Generating Devices, January 1, 2011, pages 70-71; Medicaid Provider Manual, Outpatient Therapy Section, 5.3F Evaluations and Follow-Up for Speech Generating Devices, January 1, 2010, pages 25-27)

10. On [redacted] the Department denied the prior authorization request. (Exhibit 1, pages 3 and 22)

11. On [redacted], the Department issued a Notification of Denial to the Appellant stating the prior authorization request for a speech generating device and mounting system was denied because several provisions of the speech generating device policy were not met. (Exhibit 1, pages 20-

21)

12. On [redacted], the Michigan Administrative Hearing System received the hearing request filed on the Appellant's behalf. (Department Exhibit 1, pages 2-4)

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 Medicaid Provider Manual addresses medical necessity:

> **1.5 Medical Necessity**
>
> Medical devices 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.
>
> Medical equipment may be determined to be medically necessary when all of the following apply:
>
> - 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.

- 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.

MDCH Medicaid Provider Manual,
Medical Supplier Section,
January 1, 2011, pages 4-5.

The Standards of Coverage for a speech generating device can be found in the Medical Supplier section of the Medicaid Provider Manual:

2.39 SPEECH GENERATING DEVICES

Definition
A Speech Generating Device (SGD) is defined as any electric or nonelectric aid or device that replaces or enhances lost communication skills. The device must be an integral part of a treatment plan for a person with a severe communication disability who is otherwise unable to communicate basic functional needs.

Standards of Coverage

SGDs may be covered under the following conditions for beneficiaries who demonstrate the comprehension and physical skills necessary to communicate using the requested device.

- **Prosthetic Function -** To replace a missing body part, to prevent or correct physical deformity or malfunction, or to support a weak or deformed portion of the body.
- **Rehabilitative Function -** To restore communication skills to the previous functional level by providing a tool to the beneficiary.

A speech-language pathologist, in conjunction with other disciplines such as occupational therapists, physical therapists, psychologists, and seating specialists as needed, must provide a thorough and systematic evaluation of the beneficiary's receptive and expressive communication abilities.

Ancillary professionals must possess proper credentials (certification, license and registration, etc., as appropriate).

SGD vendors (manufacturers, distributors) may not submit assessment information or justification for any requested SGD.

Frequency - The program will purchase new equipment only. Only one SGD will be purchased within a three-year period for beneficiaries under age 21. Only one SGD will be purchased within five years for beneficiaries age 21 and older.

Exceptions may be considered in situations where there has been a recent and significant change in the beneficiary's medical or functional status relative to the beneficiary's communication skills.

Warranty - The warranty period begins at the point when the device is in the beneficiary's home and the beneficiary has received adequate training to use his system for functional communication.

Repairs - Repairs for speech generating devices (SGD) are covered after the warranty expires for no more than one SGD per beneficiary. Additionally, repair of an SGD not purchased by MDCH is covered only if the SGD is determined to be necessary to meet basic functional communication needs in accordance with the criteria for SGD coverage.

Documentation

Documentation must be within 90 days and include:

- Medical diagnosis. (The medical diagnosis must directly relate to the beneficiary's communication deficit.)
- Specifications for the SGD. (Refer to the Outpatient Therapy Chapter)
- Necessary therapy and training to allow the beneficiary to meet functional needs.

All SGD evaluation documentation must be submitted following the established criteria stated within the Evaluations and Follow-up for

Speech Generating Devices subsection of the Outpatient Therapy Chapter.

Documentation for modifications must indicate the changes in the beneficiary's functional or medical status that necessitate the need for modifications in the system or parts.

When a current SGD needs replacement and the replacement is **identical** to the SGD previously purchased by MDCH, the documentation required is:

- Clinical confirmation of continued suitability by a speech-language pathologist.
- Clinical confirmation of ability to functionally access a SGD by a speech-language pathologist and occupational or physical therapist.
- Cost of the repair and the cost of replacement.

When a current SGD needs replacement and the replacement is **different** than the SGD previously purchased by the program, a new SGD Evaluation must be conducted. Additional documentation required is a statement that indicates how the current system no longer meets the beneficiary's functional communication needs. A current re-evaluation is required for any device that is not identical to the device being replaced.

For replacements due to loss or damage, indicate the following additional documentation:

- The cause of the loss or damage; and
- The plan to prevent recurrence of the loss or damage.

PA Requirements

The speech-language pathologist performs the functional communication assessment and SGD evaluation and initiates the PA request with a medical supplier that has a specialty enrollment with the MDCH to provide SGDs. To improve beneficiary access to low-end devices, a medical supplier without a SGD specialty enrollment with MDCH may provide SGDs with eight minutes or less of speech capability, basic SGD accessories such as switches, buttons, etc., or SGD wheelchair mounting systems. A SGD vendor must enroll through the MDCH CHAMPS PE on-line system as a medical supplier with a subspecialty of Speech Generating Devices in order to provide the full

> range of SGDs. (Refer to the Directory Appendix for contact information.)
>
> PA is required for all SGD systems. Required documentation must accompany the Special Services Prior Approval—Request/Authorization (MSA-1653-B) when requesting authorization for all original and replacement/upgrade SGD requests.
>
> A copy of the physician prescription must be submitted with the request for an SGD. The prescription must be based on the evaluation of an individual's communication abilities and medical needs made by a speech-language pathologist and other Evaluation team members (as appropriate).
>
> *MDCH Medicaid Provider Manual,*
> *Medical Supplier Section,*
> January 1, 2011, pages 70-71.

In the present case, the Department testified that some of the required documentation was missing from the Prior Authorization request for a speech generating device for the Appellant. Specifically, the Department's Speech-Language Pathologist referenced the criteria found in the chart under 5.3.F Evaluations and Follow-Up for Speech Generating Devices of the Outpatient Therapy section of the Medicaid Provider Manual. ([redacted] Testimony) The [redacted] Notification of Denial also specified the policy provisions that were not met. (Exhibit 1, page 20)

The testimony of the Appellant's Speech-Language Pathologist indicated there have been changes in who was assisting the Appellant in obtaining a speech generating device over the course of the year the prior authorization was sought from the Department. (Sharp Testimony) At the time of the first evaluation in [redacted], the Appellant was still residing in a skilled nursing facility. (Exhibit 1, page 25) Once she left the skilled nursing facility, the Rehabilitation Center at [redacted] began assisting the Appellant. (Exhibit 1, pages 9-10) The Speech-Language Pathologist who had been assisting the Appellant at the Rehabilitation Center also recently changed because of a maternity leave. ([redacted] Testimony) These changes appear to have impacted getting the necessary documentation to the Department to show that the Appellant meets the criteria for a speech generating device.

The adequacy of the documentation and Medicaid policy requirements were discussed in some detail during the hearing. The Appellant's representative and witnesses indicated that additional documentation exists to support the Appellant's request for the speech generating device. Specifically, the Appellant's Speech-Language Pathologist indicated that a new evaluation had been completed on [redacted], and addressed the provisions indicated in the Notification of Denial, including the formal testing. ([redacted] testimony) The Appellant's husband also stated he could provide documentation of

vision testing. ([redacted] Testimony) However, this information was not available to the Department when they reviewed and denied the prior authorization request [redacted]

Based on the documentation submitted prior to [redacted], the Appellant did not meet the Medicaid standards of coverage for a speech generating device. For example, the [redacted], Medicaid Funding Request for Speech Generating Device does not specify what assessment tools and testing were utilized and makes a recommendation in section "D. SGD and Accessories Recommendation" for a speech generating device model, the [redacted], that was ruled out in section "C. Trial with SGDs." (Exhibit 1, pages 12-17) An [redacted], letter from a Speech-Language Pathologist recommends a different model of speech generating device for the Appellant, the [redacted]. (Exhibit 1, page 9) However, the Department's Speech-Language Pathologist testified that the Department never received a new price quotation for the [redacted] model. ([redacted] Testimony)

This does not mean that the Appellant would not benefit from the requested device or that she is not deserving of it, but only that the Medicaid policy does not allow for coverage without additional documentation. Accordingly, the Department's denial must be upheld based on the information available at that time. If they have not already done so, the Appellant's husband and witnesses should submit the additional information to the Department discussed during the hearing so that the Department can review an amended prior authorization request for a speech generating device for the Appellant.

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 prior authorization request for a speech generating device based upon the available information.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

Colleen Lack
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc: [redacted]

[redacted]
Docket No. 2011-32534 PA
Decision and Order

Date Mailed: _8/4/2011__

***** NOTICE *****

The Michigan Administrative Hearing System 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 Michigan Administrative Hearing System 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.