

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

_____,
Appellant
_____ /

Docket No. 2011-3933 PA
Case No. 1000618716

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 _____. The Appellant's _____, appeared as the Appellant's representative. _____, represented the Department.

ISSUE

Did the Department properly deny the Appellant's prior-authorization request for a transcutaneous electrical nerve stimulator (TENS unit)?

FINDINGS OF FACT

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

1. The Appellant is _____ Medicaid beneficiary, who has been diagnosed with a brachial plexus injury. (Exhibit 1, page 9)
2. The Appellant needs the TENS unit to stimulate nerves and muscles in her biceps and triceps (Exhibit 1, page 6; Testimony of _____)
3. On _____, the Department received a prior-approval request and supporting documentation for a TENS Unit for the Appellant. (Exhibit 1, pages 5-31)
4. On _____, the Department denied the prior-authorization request because, under policy, TENS units may only be covered for pain reduction and the submitted documentation does not support that it is being used for pain reduction. Rather, the documentation supports that the TENS unit is being used as a therapy modality and is, therefore, not a

covered benefit. (Exhibit 1, page 4)

5. On ██████████, the State Office of Administrative Hearings and Rules received the hearing request filed on the Appellant's behalf. (Exhibit 1, page 3)

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 policy regarding TENS units states:

2.45 TRANSCUTANEOUS ELECTRICAL NERVE STIMULATOR

Definition

A Transcutaneous Electrical Nerve Stimulator (TENS) is a device that utilizes electrical current delivered through electrodes placed on the surface of the skin to decrease the beneficiary's perception of pain by inhibiting the transmission of afferent pain nerve impulses and/or stimulating the release of endorphins.

Standards of Coverage –

A TENS unit is covered for reduction of pain for beneficiaries with either chronic, intractable pain of at least three months duration, or acute post-operative pain limited to 30 days from the date of surgery, or pain related to cancer, when:

- The beneficiary is able to use the TENS device.
- There is effective control of pain.
- Other treatment modalities have been ineffective.

*Michigan Department of Community Health
Medicaid Provider Manual,
Medical Supplier Section,
October 1, 2010, pages 79-80.*

In addition, the Medical Provider Manual expressly states that therapy modalities are non-covered items:

1.10 NONCOVERED ITEMS [CHANGES MADE 7/1/10]

Items that are not covered by Medicaid include, but are not limited to:

* * *

- Therapy modalities (bolsters, physio-rolls, therapy balls, jett mobile).


*Michigan Department of Community Health
Medicaid Provider Manual,
Medical Supplier Section,
October 1, 2010, pages 16-17*

And a modality is defined by the American Medical Association as “[a]ny physical agent applied to produce therapeutic changes to biologic tissues; includes but not limited to thermal, acoustic, light, mechanical, or electric energy.” (Exhibit 1, page 34)

The Department denied the prior-authorization request in this case because the documentation does not support that the TENS unit is being used for pain relief as required by policy. Rather, it appears that it is being used as a therapy modality, which is a non-covered item.

The Appellant’s ██████████ acknowledged that the primary purpose of the TENS unit is stimulation, not pain relief as required by policy, but that the Appellant does receive some nerve pain relief from it. She further stated that the Appellant uses the TENS unit three times per day and that the TENS unit had already been given to her by the Appellant’s physical therapist.

This Administrative Law Judge concludes that the Department’s denial of the prior-authorization request must be upheld. The Appellant does not meet the Medicaid standards of coverage because the TENS unit is not being requested for pain relief. Rather, it is being requested for use as a therapy modality, which is not covered under policy. Further, pursuant to the Department witness’s testimony, it appears that the Appellant’s physical therapist has been or will be paid for use of the unit as part of her physical therapy.


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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 prior authorization of a TENS unit.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

Kristin M. Heyse
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc: 

Date Mailed: 1/27/2011

***** 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.