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. 2011-45505 QHP
Case No. [redacted]

/

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ) 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]. The Appellant, [redacted], appeared on her own behalf. [redacted], Appeals Coordinator, represented [redacted], the Medicaid Health Plan (MHP). [redacted], Chief Medical Officer, appeared as a witness for the MHP. The record was left open through [redacted], for the Appellant to provide additional documentation. No additional documentation or requests for an extension were received.

ISSUE

Did the MHP properly deny the Appellant's request for a power scooter?

FINDINGS OF FACT

Based upon the competent, material, and substantial evidence presented, I find, as material fact:

1. The Appellant is a [redacted]-year-old female Medicaid beneficiary who is currently enrolled in the Respondent MHP, [redacted].

2. On [redacted], the MHP received a request for a power scooter for the Appellant listing a diagnosis of hemiplegia. (Exhibit 1, pages 12-15)

3. On [redacted], the MHP received a Mobility and Seating Evaluation and Justification to support the Appellant's request. The medical history indicated diagnoses of right hemiparesis and moderate back/right hip pain. The Appellant was reported to be able to ambulate independently for short distances only, less than 180 feet, with a rolling walker. There was no indication of how many hours per day the Appellant would utilize the scooter. (Exhibit 1, pages 16-28)

4. On [redacted], the MHP sent the Appellant a denial notice, stating that the request for a power scooter was denied based on the Molina Healthcare Utilization Guidelines. (Exhibit 1, pages 2-3)

5. The Appellant requested a formal, administrative hearing contesting the denial on [redacted]. Another copy of the Mobility and Seating Evaluation and Justification was attached, and this copy had a treating physician's signature. (Exhibit 2)

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.

Under its contract with the Department, an MHP may devise criterion for coverage of medically necessary services, as long as those criterion do not effectively avoid providing medically necessary services. An MHP must also provide its members with the same or similar services or medical equipment to which fee-for-service beneficiaries

would otherwise be entitled under the Medicaid Provider Manual. The DCH-MHP contract provisions also allow prior approval procedures for UM purposes.

Fee-for-service Medicaid beneficiaries have limited access to power scooters. The Medicaid Provider Manual policy requires prior authorization for all adult wheelchairs, power-operated vehicles, seating, and accessories. *Department of Community Health,* Medicaid Provider Manual, Medical Supplier, Version Date: April 1, 2011, Page 88. The standards of coverage for power scooters are set forth below:

> **Power Wheelchair or Power-Operated Vehicle (POV) in Both Community Residential and Institutional Residential Settings**
>
> May be covered if the beneficiary meets **all** of the following:
>
> - Lacks ability to propel a manual wheelchair, or has a medical condition that would be compromised by propelling a manual wheelchair, for at least 60 feet over hard, smooth, or carpeted surfaces with or without rest intervals.
> - Requires use of a wheelchair for at least four hours throughout the day.
> - Is able to safely operate, control and maneuver the wheelchair in their environmental setting, including through doorways and over thresholds up to 1½", as appropriate.
> - Has a cognitive, functional level that permits safe operation of a power mobility device with or without training.
> - Has visual acuity that permits safe operation of a power mobility device.
> - For a three-wheeled power mobility device, has sufficient trunk control and balance.
>
> *Department of Community Health,*
> *Medicaid Provider Manual, Medical Supplier*
> *Version Date: April 1, 2011, Page 83*

The MHP also requires prior approval for power scooters, and utilizes the [redacted] Utilization Guideline to review such requests. Regarding medical necessity, the [redacted] Utilization Guideline requires all of the following criteria to be met:

A. The Member has at least one of the following:

- He/she is totally non-ambulatory, *or*
- He/she can only bear weight to transfer from a bed to a wheelchair, *or*
- He/she has impaired mobility, combined with difficulty in performing mobility-related activities of daily living (MRADLs) such as toileting, feeding, dressing, grooming, and bathing.

B. The member lacks ability to propel a manual wheelchair or has a medical condition that would be compromised by propelling a manual one for at least 60 feet over hard, smooth, or carpeted surfaces:

- Limitations of strength, endurance, range of motion, coordination and absence or deformity in one or both upper extremities, and trunk control and balance, should all be considered.
- Requires PT/Physiatry evaluation.

C. The member's condition is such that the requirement for a power wheelchair is long term (at least six months).

D. The member requires the use of a wheelchair for at least four hours throughout the day.

E. Must be able to be positioned in the chair safely and without aggravating any medical condition, or causing injury:

- Requires PT/OT evaluation.

F. The member's typical environment must support the use of electric, motorized, or powered wheelchair- factors such as adequate access, physical layout, maneuvering space, surfaces (thresholds more than 1 ½ inches), and obstacles, should all be considered:

- Requires evaluation by durable medical equipment (DME) supplier.

G. The member demonstrates the capability and the willingness to consistently operate the device safely without personal risk or risk to others:

- Requires PT/OT evaluation.

H. The member does not have any significant impairment of cognition, judgment, and/or vision that might prevent effective use of the wheelchair or reasonable completion of tasks with a wheelchair.

I. A specialist in physical medicine (PM&R) or neurology has provided an evaluation of the patient's medical and physical condition assuring that there is a medical necessity, and signed a prescription for the item. When such a specialist is not reasonable accessible, e.g., more than one (1) day round trip from the beneficiaries home or the patient's condition precludes such travel, an evaluation and prescription from the beneficiary's physician is acceptable.

Molina Healthcare of Michigan Utilization Guideline,
(Exhibit 1, pages 6-9)

The MHP's criteria are allowable under the contract as they do not effectively avoid providing medically necessary services and are consistent with the applicable Medicaid provider manuals and publications for coverages and limitations.

The MHP determined that the documentation submitted with the Appellant's prior authorization request did not meet the criteria set forth in the [redacted] Utilization Guidelines. Specifically, the denial notice and hearing summary indicate the information submitted was insufficient to support criteria A, B, D, E and F as listed above. (Exhibit 1, pages 1-2) The Chief Medical Officer also noted that there were no credentials provided for the individual that completed the Mobility and Seating Evaluation and Justification, so it is unknown if a physical or occupational therapist evaluation has been completed, which is required for several criteria. (Chief Medical Officer Testimony and Exhibit 1, pages 17-28)

The Appellant disagrees with the denial and testified she really needs the power scooter. She explained that she has been diagnosed with Hereditary Spastic Paraplegia (HSP), and her condition has gotten worse since the [redacted], Mobility and Seating Evaluation and Justification was completed. The Appellant testified that she can not walk and, at times, she can not even feel her legs. She explained that she can not lift her legs to move them or do anything with them. The Appellant stated she can no longer get from one place to another in her home with her walker, and has had

more problems with falling. (Appellant Testimony) The Appellant's caregiver testified that he carries the Appellant to the bathroom, puts her into the tub, carries her to the bedroom and puts her in bed, etc. He indicated that the Appellant no longer has function of her legs and can not even use her lift chair as she will fall if she tries to stand. (Caregiver Testimony)

While this ALJ sympathizes with the Appellant's situation, the documentation provided with the prior authorization request does not support that she has met all of the criteria required for prior approval of a power scooter through the MHP. It is unknown what the credentials are of the individual that completed the [redacted], Mobility and Seating Evaluation and Justification, and no separate physical/occupational/rehabilitation therapy evaluation was provided. Accordingly, the Appellant could not have met any of the MHP's criteria requiring such an evaluation the submitted documentation. Additionally, the submitted documentation does not address how many hours the Appellant will utilize the power scooter throughout the day. While the [redacted], Mobility and Seating Evaluation and Justification indicates that the Appellant has impaired mobility and needs assistance with some MRADL's, the explanations given do not indicate what mobility related assistance the Appellant needs with these activities. This form also indicates that the Appellant does not currently have a wheelchair, but does not address the Appellant's ability or inability to utilize a manual wheelchair. (Exhibit 1, pages 12-28)

Further, the Appellant's testimony regarding her diagnosis, functional abilities and limitations was not consistent with the documentation submitted to the MHP. The Appellant's testimony indicates that her condition has worsened since the [redacted] Mobility and Seating Evaluation and Justification was completed. The copy of this evaluation submitted with the hearing request only added a treating physician's signature, but did not update the diagnosis, functional abilities/limitations, or provide a physical/occupational/rehabilitation therapy evaluation. The MHP's denial must be upheld based on the submitted documentation.

As discussed during the hearing proceedings, the Appellant can always have a new prior authorization request for a power scooter submitted to the MHP with supporting documentation. It appears that the Appellant should have a new evaluation completed so that her current diagnosis, functional abilities and limitations can be documented to support the request. The Appellant might even wish to bring a copy of the [redacted] Utilization Guidelines for Electric, Motorized, or Power Operated Vehicle (Wheelchair or Scooter) with her to the evaluation to ensure that documentation is provided addressing each of the required criteria.

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 a power scooter.

IT IS THEREFORE ORDERED that:

The MHP's decision is AFFIRMED.

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

cc: [redacted]

Date Mailed: 10/3/2011

***** 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.