STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH
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IN THE MATTER OF:

[redacted]

Appellant

Docket No. 2011-1577 QHP
Case No. 75315456

[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], appeared on the Appellant's behalf. [redacted], represented [redacted] the Medicaid Health Plan (MHP). [redacted], and [redacted], appeared as witnesses for the MHP.

ISSUE

Did the MHP properly deny the Appellant's request for a high frequency chest wall oscillation 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 [redacted] Medicaid beneficiary with multiple medical impairments including cerebral palsy, spastic quadriplegia, severe scoliosis, seizure disorder, and a history of pneumonia and respiratory infections. (Exhibit 1, pages 11, 14-19 and [redacted] Testomony)

2. On [redacted], the Department received a prior approval request for the Vest Airway Clearance System for the Appellant. (Exhibit 1, pages 10-23)

3. On [redacted], the Appellant's doctor's office submitted additional medical documentation to the MHP. (Exhibit 1, pages 24-36)

4. The Appellant received the vest in [redacted], prior to his enrollment with the MHP, and has been continuing to use it regularly.

([redacted] Testimony)

5. The MHP has had difficulty obtaining objective medical documentation to verify that the vest has been helping the Appellant. ([redacted] Testimony)

6. On [redacted], the MHP issued a Notification of Denied Service to the Appellant stating that the request for a high frequency chest wall oscillation device was denied because the clinical information submitted does not support the InterQual 2010 Care Planning criteria. (Exhibit 1, pages 37-40)

7. On [redacted], the State Office of Administrative Hearings and Rules received the hearing request filed on the Appellant's behalf. The hearing request was re-submitted on [redacted], with documentation of [redacted]. (Exhibit 1, pages 4-5)

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 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.

The DCH-MHP contract provisions allow prior approval procedures for UM purposes. The MHP representative explained that the MHP utilizes the InterQual Care Planning Criteria for High Frequency Chest Wall Oscillation Device in reviewing prior authorization requests. (Exhibit 1, pages 77-79) The InterQual Care Planning Criteria for High Frequency Chest Wall Oscillation Device requires:

- Care managed by a pulmonologist/specialist
- Device trial > 4 weeks and ≤ 6 weeks
  - Device used daily/as prescribed
  - Documentation of increased sputum production
- FEV_1/FVC <75%
  - Self-care management required or caregiver unavailable/unable to administer manual chest PT

(Exhibit 1, page 78)

The InterQual criteria utilized by the MHP in this case are allowable under the DCH-MHP contract provisions as they do not effectively avoid providing medically necessary services. Rather, the InterQual criteria are less restrictive than the Medicaid Provider Manual criteria for a high frequency chest wall oscillation device.

The MHP's [redacted] explained that the evidence does not show the Appellant meets the criteria or even that the vest has made a difference in the past year. The MHP did consider that the Appellant's impairments preclude him from completing pulmonary testing listed in the InterQual criteria, and did not hold this against him. Similarly, the MHP understands that because the Appellant swallows sputum, it is very difficult to obtain quantitative documentation that the vest is helping him. Alternatively, the MHP looked to see if the vest has helped the Appellant avoid hospitalizations. The MHP found that the Appellant has had two hospitalizations for respiratory problems

during the past year. The Appellant was also admitted to the hospital the week prior to the [redacted], hearing and was intubated. The [redacted] explained that the MHP spoke with three of the Appellant's doctors to try to verify that the vest has actually been helping the Appellant, but none were able to verify that use of the vest was clearly making a difference. ([redacted] Testimony)

The Appellant's [redacted] disagrees with the denial and testified that the vest has helped the Appellant and that the Appellant's doctors strongly recommend use of this device. He explained that the Appellant's doctors strongly recommend use of the vest; he would be at greater risk of pneumonia and hospitalizations without it. The Appellant's [redacted] further explained that due to the Appellant's mental and physical handicaps, the Appellant can not clear his airway on his own. The Appellant's [redacted] testified that with the vest, the length of time between major events has increased. However, at the time of the [redacted], hearing, the Appellant's doctors were considering giving the Appellant a tracheotomy. ([redacted] Testimony)

While this ALJ sympathizes with the Appellant's situation, the documentation provided with the prior authorization request does not support that the Appellant has met the criteria for prior approval of a high frequency chest wall oscillation device. The MHP considered that the Appellant's impairments would preclude him from meeting the criteria as written and sought alternative verification from the Appellant's doctors that the vest is actually helping the Appellant. Unfortunately, the Appellant's doctors were unable to provide such verification. Accordingly, the MHP's denial was proper. The Appellant may re-apply for prior approval of a high frequency chest wall oscillation device at any time should he obtain additional supporting documentation.

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 high frequency chest wall oscillation device.

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]

Date Mailed: 2/10/2011

***** 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.