

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

P.O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

██████████,

Appellant.

_____ /

Docket No. 2011-53346 PA
Case No. ██████████

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 ██████████. The Appellant's mother, ██████████ appeared as the Appellant's representative.

██████████, Medicaid Analyst, represented the Department of Community Health.

ISSUE

Did the Department properly deny the Appellant's prior-authorization request for a gait trainer?

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 a █ year-old Medicaid beneficiary, who has been diagnosed with Trisomy 18, global hypotonia and developmental delay secondary to his primary diagnosis.
2. The Appellant is not ambulatory.
3. The Appellant has high tone in his upper extremities and a profound hypotonic central trunk, scoliosis secondary to this primary diagnosis. He has a history of seizures, significant weakness in his head/trunk, poor use of his extremities for isolated functional movement and decreased range of motion in his joints.

4. The Appellant is oxygen dependent.
5. The Appellant has used the requested gait trainer in therapy settings and is requesting one for in home use.
6. The physical therapy report dated ██████████, indicates in part, “during therapy he has demonstrated the ability to walk with a kid walk gait trainer with facilitation for forward progression.” (Exhibit A, page 11)
7. The same physical therapist signed another letter dated ██████████, indicating, “during therapy he has demonstrated the ability to walk with a kid walk gait trainer 100-150 ft. with min PA/SBA facilitation for forward progression of the unit but independent with stepping.”
8. Both physical therapy letters dated ██████████, include the following statement, “██████████ is able to demonstrate reciprocal stepping is supported stance with facilitation.”
9. The Department denied the prior-authorization request, asserting that medical necessity for the item was not established. The Notice further stated, “submitted and available documentation do not substantiate beneficiary’s ability to independently propel the gait trainer.” The Department concluded the Appellant did not meet all of the Standards of Coverage for the item.
10. Documentation submitted to support the request and the Appellant’s mother indicates the gait trainer requested will result in, “allow being upright and mobile, improve respirations, digestion, circulation, bowel/bladder function and bone development. It will help prevent progression of spinal and extremity deformities and promote increased strength and freedom of the upper/lower extremities for functional activities.”
11. Page 12 of the Department’s Exhibit A states in pertinent part, “██████████ is either on the floor throughout the day, or in his adaptive stroller. It is recommended that ██████████ obtain a Kid walk II gait trainer to promote an erect posture, improved activation of his upper extremities, lower extremities and trunk musculature and improved socialization in his environment.”
12. The Department of Community Health sent the request and documentation to a pediatric consultant who supported denying the request.
13. The Department thereafter denied the request and sent a Notice of Denial ██████████.

14. On [REDACTED], the Michigan Administrative Hearing System received the hearing request filed on the Appellant's behalf, contesting the Department's denial.

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 provides, in pertinent part, as follows:

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.

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2.7 CHILDREN'S PRODUCTS

Definition Children's products that may be considered for coverage include, but are not limited to, equipment that is used in the home or vehicle by children under age 21 for the purposes of positioning, safety during activities of daily living, or assisted mobility.

Examples of these items include: bath supports, specialized car seats, corner chairs, dynamic standers, feeder seats, gait trainers, pediatric walkers, positioning commodes, side lyers, standers, and toileting supports.

Standards of Coverage

Children's products are covered if one or more of the following applies:

- Beneficiary is unable to independently maintain a seated position.
- Beneficiary cannot stand and/or ambulate without the aid of an assistive device.
- Beneficiary has physical anomalies that require support to allow a functional position or prevent further disability.

Documentation Documentation must be less than 180 days old and include **all** of the following:

- Diagnosis appropriate for the equipment requested.
- Any adaptive or assistive devices currently used in the home.
- Reason economic alternatives cannot be used, if applicable.
- Statement of functional need from an appropriate pediatric subspecialist, occupational or physical therapist.

PA Requirements PA is required for all requests.

Payment Rules All children's products are considered **purchase only** items.

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1.10 NONCOVERED ITEMS

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

- Adaptive equipment (e.g., rocker knife, swivel spoon, etc.)
- Air conditioner
- Air purifier
- Devices used for play, pre-mobility development, or exercise are not considered pediatric mobility devices for the purpose of reimbursement and are not covered (e.g., jet mobile, ready racer, creepster crawler)
- Enteral formula to accommodate psychological or behavioral conditions, food preferences, allergies, loss of appetite, or noncompliance with a specialized diet
- Environmental Control Units
- Equipment not used or not used properly by the beneficiary
- Equipment for social or recreational purposes
- Exam tables/massage tables
- Exercise equipment (e.g., tricycles, exercise bikes, weights, mat/mat tables, etc.)
- Generators
- Hand/body wash

- Heating pads
- Home modifications
- Hot tubs
- House/room humidifier
- Ice packs
- Items for a beneficiary who is non-compliant with a physician's plan of care (or) items ordered for the purpose of solving problems related to noncompliance (e.g., insulin pump)
- Items used solely for the purpose of restraining the beneficiary for behavioral or other reasons
- Lift chairs, reclining chairs, vibrating chairs
- More than one pair of shoes on the same date of service
- New equipment when current equipment can be modified to accommodate growth
- Nutritional formula representing only a liquid form of food
- Nutritional puddings/bars
- Over-the-counter shoe inserts
- Peri-wash
- Portable oxygen, when oxygen is ordered to be used at night only
- Power tilt-in-space or reclining wheelchairs for a long-term care resident because there is limited staffing
- Pressure gradient garments for maternity-related edema
- Prosthetic appliances for a beneficiary with a potential functional level of K0
- Regular or dietetic foods (e.g., Slimfast, Carnation instant breakfast, etc.)
- Room dehumidifiers
- School Items (e.g., computers, writing aids, book holder, mouse emulator, etc.)
- Second units for school use
- Second wheelchair for beneficiary preference or convenience
- Sensory Devices (e.g., games, toys, etc.)
- Sports drinks/juices
- Stair lifts
- Standard infant/toddler formula
- Therapy modalities (bolsters, physio-rolls, therapy balls, jett mobile)
- Thickeners for foods or liquids (e.g., Thick – it)
- Toothettes

- Transcutaneous Nerve Stimulator when prescribed for headaches, visceral abdominal pain, pelvic pain, or temporal mandibular joint (TMJ) pain
- Ultrasonic osteogenesis stimulators
- UV lighting for Seasonal Affective Disorder
- Vacu-brush toothbrushes
- Weight loss or "light" products
- Wheelchair lifts or ramps for home or vehicle (all types)
- Wheelchair accessories (e.g., horns, lights, bags, special colors, etc.)
- Wigs for hair loss

For specific procedure codes that are not covered, refer to the MDCH Medical Supplier Database on the MDCH website or the Coverage Conditions and Requirements Section of this chapter.

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In this case the Appellant's mother submitted a flash drive for viewing. This ALJ was unable to view or duplicate the video on the drive, thus it was not considered. The Appellant's mother asserted it is a video of ██████████ walking in the gait trainer.

The Department witness asserted at hearing the medical necessity of the item requested is not established primarily because there is no documentation establishing the Appellant can propel the gait trainer independently.

The Appellant's mother asserts the descriptions of the Appellant's ability to ambulate are not inconsistent and establish the medical necessity for the item requested. She said the seat on the gait trainer is not rigid, but rather is on a spring, allowing for proper use of it rather than knee walking. She denied the Appellant is merely engaged in use of synergistic pattern of movement to advance forward and asserted he is able to walk in the gait trainer.

This ALJ is sympathetic to the position asserted by the Appellant's mother. The medical benefits as stated in the uncontested evidence from the physical therapist are more than mere ambulation. They include improved respirations, digestion, circulation, bowel/bladder function and bone development. Additionally, the uncontested evidence establishes the equipment will help to prevent progression of spinal and extremity deformities and promote increased strength and freedom of the upper/lower extremities for functional activities. This ALJ finds these benefits profound and clearly medical in

nature, not merely social or recreational. However, despite the apparent medical benefits the Appellant would derive from use of this equipment, it is not shown this equipment is the only means by which he can obtain these benefits. In other words, it could be that he could also achieve the same medical benefits by use of another piece of equipment he may already own or have access to. The gait trainer's function is to allow for ambulation. Here it is not shown he can achieve independent ambulation with it. Without establishing by competent, material and substantial evidence that he is able to achieve independent forward progression in the gait trainer, the clinical determination of the Department is that medical necessity for the item is not established. This ALJ cannot find the evidence submitted does establish he is able to do this, thus medical necessity for the item requested has not been established in this case. It is unfortunate this ALJ was not able to accept the video evidence into the record for consideration. One reason is that the date of the video is not known or established. If it was after the Department made its determination, it is not material to the disposition of this hearing. Additionally, this ALJ was actually unable to view, or duplicate for the benefit of the Department, the submitted flash drive due to the equipment limitations at the Michigan Administrative Hearing System. The Appellant is free and encouraged to re-submit her request at any time in the future. It is with a very heavy heart this ALJ must uphold the Department's determination in this matter.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department's denial of the Appellant's request for prior-authorization of the Kid Walk gait trainer was within their legal authority.

IT IS THEREFORE ORDERED that:

The Department's decision is **AFFIRMED**.

Jennifer Isiogu
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc: [REDACTED]

Date Mailed: 12/5/2011

***** 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.