

Docket No. 2011-7634 QHP
Decision and Order

5. On [REDACTED], the Appellant received a physical rehabilitation medicine evaluation at [REDACTED] Hospital. (Exhibit 1, Page 5).
6. The evaluation indicated “delayed milestones by three months” and “delayed motor skill to keep steady and supported independent sitting.” (Exhibit 1, Pages 5-6).
7. The evaluation recommended individual physical therapy. (Exhibit 1, Page 6).
8. On [REDACTED], a request was sent to the MHP for physical therapy to be provided through the MHP. (Exhibit 1, Pages 4-7).
9. Attached to the request was a prescription from Appellant's physician which stated the Appellant's diagnosis as: upper extremity stiffness, not sitting, possible cerebral palsy; onset date: birth. (Exhibit 1, page 7).
10. On [REDACTED], the MHP sent a letter to the Appellant denying authorization for physical therapy. The reason given was “...physical therapy to treat delays in development (progress) is not covered. This service may be provided through another public agency via the intermediate school district (example: Early On or Project Find). Additionally, per the Michigan Department of Community Health Medicaid Provider Manual, Outpatient Therapy, 5.2.B Physical Therapy, Services To School-Age Beneficiaries, physical therapy is not covered when required to be provided by school-based services.” (Exhibit 1, Page 10).
11. On [REDACTED], the Department received Appellant's Request for Hearing. (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 Michigan Department of Community Health (Department or MDCH) 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 Medicaid Health Plans.

The Respondent is one of those Medicaid Health Plans. As such, the MHP contracts with the Department to provide medically necessary Medicaid covered services to eligible Medicaid beneficiaries:

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:

- Written policies with review decision criteria and procedures that conform to managed health care industry standards and processes.
- A formal utilization review committee directed by the Contractor's medical director to oversee the utilization review process.
- Sufficient resources to regularly review the effectiveness of the utilization review process and to make changes to the process as needed.
- An annual review and reporting of utilization review activities and outcomes/interventions from the review.
- 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.*

The Michigan Medicaid program covers physical therapy if the beneficiary meets specified criteria. As stated in the Department-MHP contract language above, a MHP “must operate consistent with all applicable Medicaid provider manuals and publications for coverages and limitations.”

The MHP testified that its policies regarding limitations on physical therapy were consistent with Medicaid policy. It is noted that the MHP policy used for the MHP denial is consistent with the Department policy. (Exhibit 1, Pages 8, 9)

The pertinent sections of the Michigan Medicaid Provider Manual (MPM) are as follows:

5.2 SPEECH THERAPY

MDCH uses the terms physical therapy, PT and therapy interchangeably. PT is covered when furnished by a Medicaid-enrolled outpatient therapy provider and performed by a Michigan-licensed Physical Therapist (LPT) or an appropriately supervised Certified Physical Therapy Assistant (CPTA).

PT is not covered for beneficiaries of all ages for the following:

- When PT is provided by an independent LPT. (An independent LPT may enroll in Medicaid if they provide Medicare-covered therapy and intend to bill Medicaid for Medicare coinsurance and/or deductible only.)
- When PT is for educational, vocational, or recreational purposes.
- **If PT services are required to be provided by another public agency (e.g., CMHSP services, school-based services [SBS]).**
- If PT requires PA and services are rendered prior to approval.
- If PT is habilitative therapy. Habilitative treatment includes teaching a beneficiary how to perform a task (i.e., daily living skill) for the first time without compensatory techniques or processes. For example, teaching a child normal dressing techniques

or teaching cooking skills to an adult who has not performed meal preparation tasks previously.

- If PT is designed to facilitate the normal progression of development without compensatory techniques or processes.
- If PT is a continuation of PT that is maintenance in nature.
- **If PT services are provided to meet developmental milestones.**
- If PT services are not covered by Medicare as medically necessary.

Only medically necessary PT may be provided in the outpatient setting. Coordination between all PT providers must be continuous to ensure a smooth transition between sources.

Michigan Medicaid Provider Manual Outpatient Therapy,
July 1, 2010, pages 13-14.

The MHP witness testified that policy does not cover physical therapy for developmental delays. The MHP witness explained that the Appellant's diagnoses provided with the request for physical therapy indicated his physical condition was due to a developmental disability instead of due to an illness, or injury. The MHP witness elaborated that because in Appellant's case physical therapy was for his developmental delay, it was not a covered service under Medicaid policy and, likewise, not covered by the MHP.

The Appellant's ██████████ testified that the Appellant is ██████████ and still is not crawling or sitting up. The Appellant's ██████████ stated that the Appellant was delayed in his motor skills and needed physical therapy to help him.

The MHP witness responded that Medicaid pays the school system to provide physical therapy and for that reason the MHP cannot duplicate the provision of the service.

The Michigan Medicaid Provider Manual addresses the school system's obligation to provide physical therapy as follows:

5.3.A. DUPLICATION OF SERVICES

MDCH recognizes some areas (e.g., dysphagia, assistive technology) may appropriately be addressed by more than one discipline (e.g., OT, PT, physical therapy) in more than one setting. MDCH does not cover duplication of services, i.e., where two disciplines are working on similar areas/goals. The LPT is responsible to communicate with

other practitioners, coordinate services, and document this in his reports.

5.3.B. SERVICES TO SCHOOL-AGED BENEFICIARIES

MDCH recognizes some school-aged beneficiaries may be eligible to receive physical therapy through multiple sources. MDCH expects educational PT (e.g., strengthening to play school sports) is to be provided by the school system and is not covered by MDCH or CSHCS.

Michigan Medicaid Provider Manual Outpatient Therapy,
July 1, 2010, page 15.

The MHPs first reason for denial, that it does not cover physical therapy for developmental delay is consistent with Medicaid policy. The MHPs second reason for denial, that the Appellant's physical therapy is a school-based service and as such should be provided by his school district, is consistent with Medicaid policy. Even giving great consideration to the concerns of Appellant's ██████████, the MHP cannot be ordered to provide physical therapy in this circumstance because the MHP is prohibited from using Medicaid funds to cover physical therapy if it is the school's obligation to cover physical therapy for the Appellant.

The Appellant failed to prove by a preponderance of evidence that the MHP was obligated to provide physical therapy and the MHP properly to denied physical therapy services at this time.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Medicaid Health Plan properly denied Appellant's request for physical therapy.

IT IS THEREFORE ORDERED that:

The Medicaid Health Plan's decision is AFFIRMED.

Lisa K. Gigliotti
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc: ██████████
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Date Mailed: 2/1/2011

***** 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.