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],

Docket No. 2012-15174 PA
Case No. [redacted]

Appellant
_____/

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], Speech Language Pathologist, and [redacted], Occupational Therapist, appeared as the Appellant's representatives. [redacted], mother, appeared as a witness for the Appellant.

[redacted], Appeals Review Manager, represented the Department. [redacted], Speech Language Pathologist Consultant Reviewer, appeared as a witness for the Department.

ISSUE

Did the Department properly deny the Appellant's prior authorization request for a speech generating 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 a [redacted]-year old Medicaid beneficiary who has been diagnosed with malignant neoplasm of the brain, right cerebral anaplastic astrocytoma, aphasia, and expressive deficits. (Exhibit 1, pages 6, 23, 29-30 and 45-49)

2. On or about [redacted], the Department received a prior approval-request for a speech generating device for the Appellant. (Exhibit 1, page 4)

3. On [redacted], the Department requested additional information to process the prior authorization request for a speech generating device. The request noted that all available economic alternatives have not been trialed and rules out including the AMDI SMART speak system and Tobii systems. Vision test, occupational therapy report addressing range of motion, access, pressure needed, mobility with device were requested. Additionally, the Department indicated all school reports, teacher reports, speech occupational therapy and physical therapy reports and IEP report and goals, and the person responsible for implementing goals were needed. (Exhibit 1, pages 4-5)

4. On [redacted], the Appellant's prior authorization request for a speech generating device was re-submitted. An addendum responding to the request for additional information was submitted, along with the Appellant's IEP, manufacturer's invoice/quote, funding request, prescription, evaluation, and product information. (Exhibit 1, pages 6-37)

5. On [redacted], the Department issued a Notification of Denial to the Appellant stating the prior authorization request for a speech generating device was denied under the Medicaid Provider Manual Policy, Medical Supplier chapter, sections 1.5 Medical Necessity and 1.5A Prescription Requirements. (Exhibit 1, pages 38-39)

6. On [redacted], the Michigan Administrative Hearing System received the hearing request filed on the Appellant's behalf. (Department Exhibit 1, page 3)

7. On [redacted], the Department received a prior authorization request for speech therapy services for the Appellant. (Exhibit 1, pages 43-49)

8. On [redacted], the Department requested additional information to process the prior authorization request for speech therapy. The Department asked what is the Appellant's potential ability to communicate basic functional needs with a speech generating device, noted the previously submitted prior authorization request for a speech generating device and requested documentation addressing the medical need for both the speech generating device and speech therapy, and noted that the submitted evaluation did not include required objective documentation. (Exhibit 1, pages 50-51)

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 addresses medical necessity:

> **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.

MDCH Medicaid Provider Manual,
Medical Supplier Section,
October 1, 2011, pages 4-5.

The Standards of Coverage for a speech generating device can be found in the Medical Supplier section of the Medicaid Provider Manual:

2.39 SPEECH GENERATING DEVICES

Definition
A Speech Generating Device (SGD) is defined as any electric or nonelectric aid or device that replaces or enhances lost communication skills. The device must be an integral part of a treatment plan for a person with a severe communication disability who is otherwise unable to communicate basic functional needs.

Standards of Coverage

SGDs may be covered under the following conditions for beneficiaries who demonstrate the comprehension and physical skills necessary to communicate using the requested device.

- **Prosthetic Function -** To replace a missing body part, to prevent or correct physical deformity or malfunction, or to support a weak or deformed portion of the body.
- **Rehabilitative Function -** To restore communication skills to the previous functional level by providing a tool to the beneficiary.

A speech-language pathologist, in conjunction with other disciplines such as occupational therapists, physical therapists, psychologists, and seating specialists as needed, must provide a thorough and systematic evaluation of the beneficiary's receptive and expressive communication abilities.

Ancillary professionals must possess proper credentials (certification, license and registration, etc., as appropriate).

SGD vendors (manufacturers, distributors) may not submit assessment information or justification for any requested SGD.

Frequency - The program will purchase new equipment only. Only one SGD will be purchased within a three-year period for beneficiaries under age 21. Only one SGD will be purchased within five years for beneficiaries age 21 and older.

Exceptions may be considered in situations where there has been a recent and significant change in the beneficiary's medical or functional status relative to the beneficiary's communication skills.

Warranty - The warranty period begins at the point when the device is in the beneficiary's home and the beneficiary has received adequate training to use his system for functional communication.

Repairs - Repairs for speech generating devices (SGD) are covered after the warranty expires for no more than one SGD per beneficiary. Additionally, repair of an SGD not purchased by MDCH is covered only if the SGD is determined to be necessary to meet basic functional communication needs in accordance with the criteria for SGD coverage.

Documentation

Documentation must be within 90 days and include:

- Medical diagnosis. (The medical diagnosis must directly relate to the beneficiary's communication deficit.)
- Specifications for the SGD. (Refer to the Outpatient Therapy Chapter)
- Necessary therapy and training to allow the beneficiary to meet functional needs.

All SGD evaluation documentation must be submitted following the established criteria stated within the Evaluations and Follow-up for Speech Generating Devices subsection of the Outpatient Therapy Chapter.

Documentation for modifications must indicate the changes in the beneficiary's functional or medical status that necessitate the need for modifications in the system or parts.

When a current SGD needs replacement and the replacement is **identical** to the SGD previously purchased by MDCH, the documentation required is:

- Clinical confirmation of continued suitability by a speech-language pathologist.
- Clinical confirmation of ability to functionally access a SGD by a speech-language pathologist and occupational or physical therapist.
- Cost of the repair and the cost of replacement.

When a current SGD needs replacement and the replacement is **different** than the SGD previously purchased by the program, a new SGD Evaluation must be conducted. Additional documentation required is a statement that indicates how the current system no longer meets the beneficiary's functional communication needs. A current re-evaluation is required for any device that is not identical to the device being replaced.

For replacements due to loss or damage, indicate the following additional documentation:

- The cause of the loss or damage; and
- The plan to prevent recurrence of the loss or damage.

PA Requirements

The speech-language pathologist performs the functional communication assessment and SGD evaluation and initiates the PA request with a medical supplier that has a specialty enrollment with the MDCH to provide SGDs. To improve beneficiary access to low-end devices, a medical supplier without a SGD specialty enrollment with MDCH may provide SGDs with eight minutes or less of speech capability, basic SGD accessories such as switches, buttons, etc., or SGD wheelchair mounting systems. A SGD vendor must enroll through the MDCH CHAMPS PE on-line system as a medical supplier with a subspecialty of Speech Generating Devices in order to provide the full range of SGDs. (Refer to the Directory Appendix for contact information.)

PA is required for all SGD systems. Required documentation must accompany the Special Services Prior Approval—Request/Authorization (MSA-1653-B) when requesting authorization for all original and replacement/upgrade SGD requests.

A copy of the physician prescription must be submitted with the request for an SGD. The prescription must be based on the evaluation of an individual's communication abilities and medical needs made by

> a speech-language pathologist and other Evaluation team members (as appropriate).
>
> *MDCH Medicaid Provider Manual,*
> *Medical Supplier Section,*
> October 1, 2011, pages 70-71.

In the present case, the Department's Speech Language Pathologist Consultant Reviewer testified that all economic alternatives had not been trialed and ruled out, as required by the Medicaid Provider Manual policy. She stated that at least 4 other devices would be possibilities, which also allow for both Spanish and English. The Speech Language Pathologist Consultant Reviewer explained that the requested speech generating device was very high level, and while the submitted documentation rules out low level devices, no mid-level devices were trialed and ruled out. The Department would like to have seen trials with mid-level devices that allow for hundreds of icon/vocabulary pages in Spanish and English and are light weight. She further testified that the Appellant's ability to speak appears to be improving, and a request for speech therapy services was submitted on [redacted]. Accordingly, the hope is that he would not use a speech generating device long term; rather he would be a verbal child. (Testimony of Speech Language Pathologist [redacted])

The testimony of the Appellant's Speech-Language Pathologist indicated that several devices were trialed, and the requested device was selected because it allowed for novel messages, not just pre-programmed messages. She stated that even if the Appellant has progressed to three word utterances, this is not enough to express his medical needs. The Appellant's Speech-Language Pathologist explained that the ability to generate novel messages is especially important considering the Appellant's complicated medical condition, and that the selected device would support the Appellant long term. (Testimony of Speech Language Pathologist [redacted]) The Appellant's mother's testimony indicated that she does not know which device is best for the Appellant, but his speech language pathologist and occupational therapist do. She stated that the Appellant needs help, it is very frustrating and he does not know how to communicate. (Testimony of [redacted])

The submitted documentation listed trials with four other speech generating devices. The documentation is consistent with the Department's Speech Language Pathologist Consultant Reviewer testimony that none of these devices are mid-level alternatives. (Exhibit 1, page 26 and Testimony of Speech Language Pathologist [redacted]) Accordingly, the Department's determination must be upheld as all economic alternatives had not been trialed and ruled out. This does not mean that the Appellant would not benefit from the requested device or that he is not deserving of it, but only that the Medicaid policy does not allow for coverage without additional documentation.

A new prior authorization request can always be submitted addressing trials with mid-level devices. Clarification of the Appellant's potential to communicate verbally and the

medical necessity for both speech therapy services and a speech generating device should also be included in light of the [redacted], prior authorization request for speech therapy services.

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 prior authorization request for a speech generating device based upon the available information.

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: 3/1/2012

***** 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.