**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) 373-4147

**IN THE MATTER OF:**

[redacted],

**Docket No.** 2012-59931 PA
**Case No.** 63961421

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 Tuesday September 25, 2012. The Appellant was represented by Amy Ortega, Occupational Therapist. She had no witnesses. Elizabeth Bennani, Medicaid analyst, represented the Department. She had no witnesses.

## PRELIMINARY MATTER

At hearing the parties stipulated that the Appellant required Prior Authorization line items #1 and #5; Orthoseat CSTM Headrest Pad #509552 and Orthoseat Horiz Chest Positioning Belt #50978; Bodypoint Safety Belt/Pelvic Strap. [*See* Department's Exhibit A, at page 2 and 8]

## ISSUE

Did the Department properly deny Appellant's request for Prior Authorization (PA) of [replacement] custom seating for the Appellant's wheelchair?

## 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 26-year old Medicaid-SSI beneficiary. (Appellant's Exhibit 1)

2. The Appellant is identified as a person with a developmental disability. (Appellant's Exhibit 1, pp. 2 and 3)

3. The Appellant's guardians appointed [redacted], OT, to represent their son at hearing. (Appellant's Exhibit 1)

4. According to [redacted] the Appellant's existing seating "has good foam." The frame of his wheelchair is also in good condition. (*See* Testimony of Ortega)

5. The Appellant requires "stretchy/smooth [versus] rough fabric" for his seating anomalies. (*See* Testimony of Ortega and Department's Exhibit A at pp. 2-27).

6. The Appellant's PA request was submitted on November 1, 2011; as amended on December 27, 2011 and February 28, 2012. (*See* Department's Exhibit A, at pp. 1-27)

7. The PA was denied by OMA Medical Consultant Dr. Donovan, MD, who wrote: "The documentation submitted does not support the medical need for custom seating over standard. Section 1.5 & 2.47 – [submitted] March 28, 2012." (Department's Exhibit A, page 28)

8. The Appellant was notified of the denial in writing on April 6, 2012 – the department referenced the published policy standards of medical necessity, DME, and standards of coverage sections found within the medical supplier chapter of the Medicaid Provider Manual. (*See* Department's Exhibit A, pp. 29, 30 and 35-44)

9. His further appeal rights were contained therein.

10. At hearing - the Department offered evidence in support of its denial through exemplars from the Medicaid Provider Manual dated July 1, 2012 –most notably for the sections on determining medical necessity, standards of coverage and DME as **"revised 7/1/12**" (*See* Department's Exhibit A, pp. 35-44 and Department's Exhibit B – throughout)

11. The instant request for hearing was received by the Michigan Administrative Hearing System (MAHS) for the Department of Community Health on June 26, 2012. (Appellant's Exhibit #1)

## 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. **(revised 7/1/12)**[1]

[1] The MPM now reads: "The service/device meets the standards of coverage published by MDCH " *Supra* at page 5

- 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. (Emphasis supplied)

Medicaid Provider Manual, (MPM), Medical Supplier, January 1, 2012, pages 4 and 5[2]

* * *

**2.47. B. STANDARDS OF COVERAGE**

**Custom-Fabricated Seating Systems**

May be covered when required to assure safe mobility and functional positioning when the beneficiary has postural deformities, contractions, tonal abnormalities, functional impairments, muscle weakness, pressure points, and seating balance difficulties. May be covered if all of the following are met:

- Two or more of the above clinical indications are documented in the medical record and in the mobility assessment, and the severity of the clinical indications cannot be accommodated by a standard seating system.
- Must accommodate growth and adjustments a minimum of 3" in depth and 2" in width.
- Must document the reason for the selection when the system cannot be used in more than one mobility device.
- Is the most economic[al][3] alternative available to meet the beneficiary's mobility needs.

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MPM, *Supra*, page 84

[2] This is the version of the MPM in place at the time of negative action.
[3] *Compare with* MPM §2.47B, medical supplier, January 11, 2012

The Department's representative testified that the Appellant's request was denied following a March 28, 2012 review by Dr. Donovan based on information supplied to him which failed to demonstrate medical need or satisfaction of the published standards of coverage found at section 2.47B of the MPM.

The Department's denial reported that in addition to failing to demonstrate medical need, the PA was denied because "…owing to the request for *repairs* to current Quickie 2 manual wheelchair."[4]

The Appellant's representative disputed the lack of relevant body imagining as claimed by the Department's representative through its Exhibit B. She said that Dr. Koepnick had presented relevant imagining regarding the Appellant's "fit." In her testimony the Appellant's representative also stated that the Appellant "…ha[d] good foam"

On review, The Medicaid Provider Manual and its quarterly updates are available to the public. Bulletins are sent – as they develop - to all enrolled providers. The most recent version of the MPM is maintained on the MDCH website[5] – with back issues available on compact disc.

The Department [in its preamble Overview] warns all users: "When researching policy, it is imperative that the most current version be used." (*See* MPM Overview §§1.2, 3.1 and 3.2 pp. 5-8)

The update-service is also available to the Department reviewers who failed to utilize the "the most current version" when providing information to their medical consultant.

The Department's review must be reversed owing to the published changes in the several standards presented in the record – not the least of which was substituting their cost effectiveness review as "economical instead of economic"[6] the former dealing frugality and the latter concerning management of income – standards often at odds under the government weal.

The MPM is not produced primarily for the convenience of litigation, but rather as a tool for providers and medical decision makers involved the Medicaid system.

[4] Neither PA [MSA 1653B] submitted by the Department shows a "request to repair." *See* Department's Exhibit A, pp. 1 and 16
[5] *See* www.Michigan.gov
[6] Webster's New World Dictionary, (2nd ed), 1976

While the ALJ suspects innocent error the prospect of deciding a PA with the wrong edition of the policy manual erodes public confidence in the State of Michigan Medicaid system and presents as reversible error.

The manuals' admonition to its users that it is "imperative to utilize the current version" represents a fundamental drafting principle: "If language is plain and unambiguous it must be given effect."[7]

## DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department improperly denied the Appellant's request for custom seating.

**IT IS THEREFORE ORDERED** that:

The Department's negative action is Reversed.

**IT IS FURTHER ORDERED** that:

The Department shall reassess the Appellant for Custom Seating under the MPM policies in effect on January 1, 2012 within 90 days receipt of this decision and order.

The Department shall also determine whether the Appellant's PA is a request for repair.

\s\

Dale Malewska
Administrative Law Judge
for James K. Haveman Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: 1/28/2013

[7] *See generally*, Eskridge & Frickey, Legislation (1988), §2 p. 691

***** 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.