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. 2013-11652 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], mother, represented the Appellant. [redacted], Medicaid Utilization Analyst, represented the Department.

ISSUE

Did the Department properly deny the Appellant's prior authorization request for a Snug Seat hi-lo base and accessories?

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 cerebral palsy. (Exhibit 1, page 1)

2. On or about [redacted], the Department received a prior authorization request for a Snug Seat hi-lo base and accessories for the Appellant. (Exhibit 1, page 4)

3. On [redacted], the Department requested additional information. (Exhibit 1, page 4)

4. On or about [redacted], Department received the resubmitted prior authorization request, with response to the request for additional information. (Exhibit 1, pages 1-13)

5. On [redacted], the Department's consulting physician determined

the prior authorization request should be denied because the seat would not be covered for peer interaction or social development. Equipment for school use or primarily school use is also non-covered and is the responsibility of the school to provide. (Exhibit 1, page 14)

6. On [redacted], the Department issued Notification of Denial to the Appellant and the medical supplier stating the prior authorization request was denied because the information provided indicated the seat is for the purpose of peer interaction, school classroom activities, school circle time/floor activities, and social development and is to be stored at school except on weekends and holidays when the chair is to be brought to the Appellant's place of residence for use at home with the family. Medicaid covers durable medical equipment for use within the beneficiary's place of residence, use at school is non-covered. Medical devices are covered if they are the least costly alternative and meet the Michigan Department of Community Health Medicaid standards of Coverage Conditions and Requirements. Durable medical equipment for the purpose of school, therapy, developmental, sensory, exercise, play, social and/or recreational activities, and for preference and/or convenience is non-covered. (Exhibit 1, pages 15-16)

7. On [redacted], the Michigan Administrative Hearing System received the hearing request filed on the Appellant's behalf. (Exhibit 1, page 17)

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:

SECTION 1 – PROGRAM OVERVIEW

This chapter applies to Medical Suppliers/Durable Medical Equipment and Orthotists/Prosthetists.

Providers of Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) must be enrolled as a Medicare provider effective September 30, 2009. (Refer to the General Information for Providers chapter for additional information.)

The primary objective of the Medicaid Program is to ensure that medically necessary services are made available to those who would not otherwise have the financial resources to purchase them.

The primary objective of the Children's Special Health Care Services (CSHCS) Program is to ensure that CSHCS beneficiaries receive medically necessary services that relate to the CSHCS qualifying diagnosis.

This chapter describes policy coverage for the Medicaid Fee-for-Service (FFS) population and the CSHCS population. Throughout the chapter, use of the terms Medicaid and MDCH includes both the Medicaid and CSHCS Programs unless otherwise noted.

Medicaid covers the least costly alternative that meets the beneficiary's medical need for medical supplies, durable medical equipment or orthotics/prosthetics.

* * *

Durable Medical Equipment (DME)

DME are those items that are Food and Drug Administration (FDA) approved, can stand repeated use, are primarily and customarily used to serve a medical purpose, are not useful to a person in the absence of illness or injury, and can be used in the beneficiary's home. Examples are: hospital beds, wheelchairs, and ventilators. DME is a benefit for beneficiaries when:

- It is medically and functionally necessary to meet the needs of the beneficiary.
- It may prevent frequent hospitalization or institutionalization.
- It is life sustaining.

* * *

1.3 PLACE OF SERVICE

Medicaid covers medical supplies, durable medical equipment (DME), orthotics, and prosthetics for use in the beneficiary's place of residence except for skilled nursing or nursing facilities.

* * *

1.5 MEDICAL NECESSITY [CHANGES MADE 7/1/12]

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:

- The service/device meets applicable federal and state laws, rules, regulations, and MDCH promulgated policies.
- It is medically appropriate and necessary to treat a specific medical diagnosis, 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.
- The function of the service/device:
    - meets accepted medical standards;
    - practices guidelines related to type, frequency, and duration of treatment; and
    - is within scope of current medical practice.
- It is inappropriate to use a nonmedical item.
- It is the most cost effective treatment available.

- The service/device 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.
- The service/device meets the standards of coverage published by MDCH. **(revised 7/1/12)**
- 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.

* * *

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.

***

2.47 WHEELCHAIRS, PEDIATRIC MOBILITY AND POSITIONING MEDICAL DEVICES, AND SEATING SYSTEMS

2.47.A. DEFINITIONS

Wheelchair
A wheelchair has special construction consisting of a frame and wheels with many different options and includes, but is not limited to, standard, light-weight, highstrength, powered, etc.

Pediatric Mobility Product
Pediatric mobility products are pediatric-sized mobility and positioning medical devices (as defined by PDAC) that have a special light-weight construction consisting of a frame and wheels/base with many different options. Pediatric mobility devices include pediatric wheelchairs, transport chairs, hi/low chairs with outdoor/indoor bases, and standing systems designed specifically for children with special needs. These products must meet the definition of Durable Medical Equipment (DME) (refer to the Program Overview section of this chapter) and are not available as a commercial product or for which a commercial product can be used as an economic alternative.

Licensed Medical Professional
A licensed medical professional is defined as an occupational or physical therapist or a rehabilitation RN who has at least two years' experience in rehabilitation seating and is not an employee of the medical supplier.

Medicaid policy requires that assessments must be performed by a licensed medical professional. A physical therapy assistant (PTA) or a licensed occupational therapy assistant (OTA) may not perform any part of the assessment or evaluation and may not complete or sign the MSA-1656.

Pediatric Subspecialist
A pediatric subspecialist is a physician who is board-certified in a pediatric subspecialty (such as a physiatrist, neurologist, or orthopedist). A pediatrician is not considered a pediatric subspecialist relative to this policy.

Institutional Residential Setting
An institutional residential setting refers to a nursing facility, hospital long-term care unit, or county medical care facility.

Community Residential Setting
A community residential setting is defined as a non-institutional setting in the community, i.e., beneficiary's own home, Adult Foster Care (AFC), Assisted Living or Group Home.

2.47.B STANDARDS OF COVERAGE

****

Pediatric Mobility Devices and Wheelchairs
May be covered if **all** of the following are met for each type of device. For CSHCS beneficiaries, a medical referral from an appropriate board-certified pediatric subspecialist or an Office of Medical Affairs (OMA)-approved physician is required. MDCH also reserves the right to require a medical referral from an appropriate board-certified pediatric subspecialist for Medicaid beneficiaries.

For manual pediatric wheelchairs:

- Has a diagnosis/medical condition that indicates a lack of functional ambulatory status with or without an assistive medical device or has a willing and able caregiver to push the chair **and** the wheelchair is required in a community residential setting.
- Is required for long-term use (greater than 10 months).
- Must accommodate growth and adjustments for seating systems a minimum of 3" in depth and 2" in width.
- Is designed to be transportable.
- Is the most economic alternative available to meet the beneficiary's mobility needs.

***

For pediatric hi/low chairs:

- Positioning cannot be accommodated by use of other mobility devices or commercial products.
- Is required for independent transfers.
- All mobility products with interchangeable bases and seating systems have been ruled out as economic alternatives.
- Must accommodate growth and adjustments for seating systems a minimum of 3" in depth and 2" in width.

MDCH Medicaid Provider Manual,
Medical Supplier Section
July 1, 2012, pages 1, 3-5, 26 and 81-83

Additionally, the Medicaid Provider Manual policy indicates some items are non covered. The list of items that are non covered induces, but is not limited to, equipment for social or recreational purposes, school items, second units for school use, and a second wheelchair for beneficiary preference or convenience. MDCH Medicaid Provider Manual, Medical Supplier Section, July 1, 2012, pages 17-18.

In the present case, the Department determined the prior authorization request should be denied because the documentation submitted indicated the seat is for the purpose of peer interaction, school classroom activities, school circle time/floor activities, and social development and is to be stored at school except on weekends and holidays when the chair is to be brought to the Appellant's place of residence for use at home with the family. Medicaid covers durable medical equipment for use within the beneficiary's place of residence, use at school is non-covered. Medical devices are covered if they are the least costly alternative and meet the Michigan Department of Community Health Medicaid standards of Coverage Conditions and Requirements. Costs of repairs compared to replacement would have to be documented for consideration. Durable medical equipment for the purpose of school, therapy, developmental, sensory, exercise, play, social and/or recreational activities, and for preference and/or convenience is non-covered. The Medicaid Utilization Analyst noted that the Appellant has a previously authorized for a mobility seating device, a rigid pediatric wheelchair with tilt in space, recline function and specialized seating. The seat height of this chair is 20 ½ inches, which is quite high and would almost put the Appellant at regular tabletop height. The Medicaid Utilization Analyst further testified that the standards of coverage for a hi/lo chair, include that it is required for independent transfers. The information submitted with this prior authorization request did not establish that the Appellant would be independent with transfers with the requested Snug Seat hi-lo base. (Exhibit 1, pages 1-16; Medicaid Utilization Analyst Testimony)

The Appellant's mother disagrees with the denial and testified the information provided was not correct, the requested seat would be used at home and is not for school use. The Appellant's mother indicated the current wheelchair is not used at home because it

is used outside, so the wheels go over god knows what. If used in the home, this would then be on the floors at home and the Appellant is often on the floors at home. The Appellant's mother also stated that the current wheelchair does not put the Appellant in the right position. Their table at home is high. The tray for the wheelchair is not close enough for the Appellant to be able to feed herself. Further, the current wheelchair/seating system was ordered too big. The Appellant scoots her butt down and then she is not in the correct sitting position. However, the Appellant's mother acknowledged that the Appellant would not be independent with transferring with the requested seat. (Mother Testimony)

The Medicaid Utilization Analyst explained that there are several styles of trays and a new tray would be more cost effective to meet the Appellant's feeding needs than the requested seat. The Appellant's mother's testimony indicates the Appellant needs to be re-evaluated for her current wheelchair to be sure it meets her needs. Some items would not even require prior authorization. Further, a new prior authorization request for products or services for the Appellant's positioning and feeding needs can be submitted at any time and if replacement is requested, documentation should be addressing the cost effectiveness of repair compared to replacement. (Medicaid Utilization Analyst Testimony)

Based on the documentation submitted, the Appellant did not meet the Medicaid standards of coverage and documentation requirements to establish medical necessity for the requested a Snug Seat hi-lo base and accessories. The submitted documentation indicated the primary use of the requested seat would be for school use, as well as peer and social interaction. The Medicaid policy is clear that services and/or products can not be covered for these reasons. The Appellant's mother's concern about using the current wheelchair in the home after it has been used outside is not sufficient to justify a second seating/positioning/feeding item for use in the home. This would be a preference/convenience issue, which is also not covered under the Medicaid policy. Further, the evidence does not establish that the Appellant would be independent with transfers with the requested Snug Seat hi-lo base and accessories. Accordingly, the Department's denial must be upheld.

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 Snug Seat hi-lo base and accessories based on the submitted documentation.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

\s\
Colleen Lack
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: 1/28/2013

***** 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.