

**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:

Docket No. 2013-22142 CWS
Case No. [REDACTED]

[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], Appellant's mother, appeared and testified on Appellant's behalf. Appellant's witnesses were [REDACTED], Case Manager from Community Mental Health (CMH) and [REDACTED], Appellant's Occupational Therapist through CMH.

[REDACTED], Director of the Michigan Department of Community Health (Department or MDCH) Children's Home and Community Based Waiver Program (CWP), represented the Department. [REDACTED], Occupational Therapist and Consultant to the CWP; appeared as a witness for the Department.

ISSUE

Did the Department properly deny Appellant's prior authorization request for a Workman Team Dual Trike?

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 Medicaid beneficiary. (Exhibit 1; Testimony)
2. The Appellant is enrolled in the MDCH Children's Home and Community Based Waiver Program (CWP). (Exhibit A, p 14; Testimony).
3. The Appellant is a 17 year-old male who resides with his mother in an apartment in [REDACTED], Michigan. (Exhibit 1; Testimony)

4. The Appellant is diagnosed with autism; he is hypotonic and has pronated feet to the point where he uses orthotics. (Exhibit A, p 6; Testimony)
5. The Appellant attends a special program at [REDACTED]. Appellant attends regular classes with the assistance of a student in each class. (Testimony)
6. On [REDACTED], [REDACTED] Community Mental Health submitted to the Department a prior authorization request for a Worksman Team Dual Trike bicycle for Appellant. (Exhibit A, pp 3-6)
7. The prior authorization request was reviewed by [REDACTED], OTR, who determined that there were other, more cost effective ways to meet Appellant's need for sensory input, activity in the community, and physical activity. (Exhibit A, p 2; Testimony)
8. On [REDACTED], the Appellant was sent a written notice that his prior authorization request had been denied. The notice contained Appellant's rights to a Medicaid fair hearing. (Exhibit A, p 15).
9. On [REDACTED], the Michigan Administrative Hearing System received the Appellant's request for an administrative hearing. (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.

Section 1915(b) of the Social Security Act provides:

The Secretary, to the extent he finds it to be cost-effective and efficient and not inconsistent with the purposes of this subchapter, may waive such requirements of section 1396a of this title (other than subsection (s) of this section) (other than sections 1396a(a)(15), 1396a(bb), and 1396a(a)(10)(A) of this title insofar as it requires provision of the care and services described in section 1396d(a)(2)(C) of this title) as may be necessary for a State...

The State of Michigan has opted to simultaneously utilize the authorities of the 1915(b) and 1915 (c) programs to provide a continuum of services to disabled and/or elderly populations. Under approval from the Centers for Medicare and Medicaid Services (CMS) the Department of Community Health (MDCH) operates a section 1915(b) Medicaid Managed Specialty Services and Supports program waiver in conjunction with section 1915(c) Home and Community Based Services Waivers. [REDACTED] CMH (PIHP/CMH) contracts with the Michigan Department of Community Health to provide services under the CWP.

At issue in this case is the Appellant's prior authorization request for a Workman Team Dual Trike. The Medicaid Provider Manual, Mental Health and Substance Abuse Services chapter, Section 14 gives a description of CWP.

Section 14

The Children's Home and Community Based Services Waiver Program (CWP) provides services that are enhancements or additions to regular Medicaid coverage to children up to age 18 who are enrolled in the CWP.

Section 14.1

The CWP enables Medicaid to fund necessary home and community-based services for children with developmental disabilities who reside with their birth or legally adoptive parent(s) or with a relative who has been named legal guardian under the laws of the State of Michigan, regardless of their parent's income.

*Medicaid Provider Manual (MPM)
Mental Health and Substance Abuse Services
Section 14, April 1, 2013, page 77*

Specialized Medical Equipment and Supplies

Specialized medical equipment and supplies includes durable medical equipment, environmental safety and control devices, adaptive toys, activities of daily living (ADL) aids, and allergy control supplies that are specified in the child's individual plan of services. This service is intended to enable the child to increase his abilities to perform ADLs or to perceive, control, or communicate with the environment in which the child lives. Generators may be covered for a beneficiary who is ventilator-dependent or requires daily use of oxygen via a concentrator. The size of a generator will be limited to the wattage required to provide power to essential life-sustaining equipment. This service also includes vehicle modifications, van lifts and wheelchair tie-downs. Specialized medical equipment and supplies includes items necessary for life support, ancillary supplies and equipment necessary for the proper functioning of such items, and durable and non-durable medical equipment not covered by Medicaid or through other insurance. (Refer to the Medical Supplier Chapter for information regarding Medicaid-covered equipment and supplies.)

Equipment and supplies must be of direct medical or remedial benefit to the child. "Direct medical or remedial benefit" is a prescribed specialized treatment and its associated equipment or environmental accessibility adaptation that is essential to the implementation of the child's individual plan of services. The plan must include documentation that, as a result of the treatment and its associated equipment or adaptation, institutionalization of the child will be prevented. A prescription is required and is valid for one year from the date of signature. All items must be determined to be essential to the health, safety, welfare, and independent functioning of the child as specified in the individual plan of services. There must be

documented evidence that the item is the most cost-effective alternative to meet the child's need following value purchasing standards. All items must meet applicable standards of manufacture, design and installation. The CMHSP, or its contract agency, must maintain documentation to support that the best value in warranty coverage (e.g., the most coverage for the least cost, per industry standards) was obtained for the item at the time of purchase. (Emphasis added)

* * * *

2. State-Level Prior Authorization of Specialized Medical Equipment and Supplies

All other items and services covered under this category must be prior authorized by the MDCH CWP Clinical Review Team following denial by all applicable insurance sources, e.g., private insurance, CSHCS, Medicaid. (Refer to the Children's Waiver Program [CWP] Prior Authorization subsection for details regarding the prior authorization process.) Prior authorization will not be given for items and services that exceed quantity/frequency limits as published in the MDCH CMHSP Children's Waiver Database in effect at the time the service is authorized. Pursuant to prior authorization by the MDCH CWP Clinical Review Team and provision of the items or service, Medicaid payment will be at the rate prior authorized. Emphasis added.

*Medicaid Provider Manual (MPM)
Mental Health and Substance Abuse Services
Section 14, April 1, 2013, pp 81-83*

The Department's Occupational Therapist (OT)/ Consultant testified that she recommended denial of Appellant's prior authorization request because there are other more cost effective alternatives that would meet Appellant's needs. The Department's OT/Consultant explained that she did not believe the Dual Trike would provide sensory input or exercise for Appellant, as claimed in the prior authorization request. The Department's OT/Consultant indicated that the Dual Trike would likely not provide Appellant exercise because the staff person accompanying him on the bike would likely do most of the pedaling; because of Appellant's foot problems and because of his diagnosis of autism, which would cause him to become easily distracted while on the Trike. The Department's OT/Consultant indicated that Appellant could receive sensory stimulation through other, more cost effective means, such as compression clothing, heavy blankets, or bouncing, while seated, on a trampoline. The Department's OT/Consultant testified that there were less costly alternatives available to get Appellant into the community as well, such as a large stroller with a shade that could be pushed by Appellant's caregiver.

Appellant's mother testified that Appellant is [REDACTED] tall and weighs [REDACTED] pounds, so if he were on his own Trike, it would be difficult for anyone to keep up with him or stop him. Appellant's mother indicated that the problems with Appellant's feet are worsening. Appellant's mother testified that they have already tried compression clothing, heavy blankets, and a trampoline. Appellant's mother testified that Appellant would not just sit on the Dual Trike and ride; he would pedal too. Appellant's mother indicated that she felt the Dual Trike was very important to her son because he has so few interests and she knows he would love riding the Trike. Appellant's mother

indicated that Appellant does not have the sense of physical danger and proper judgment to be able to ride a Single Trike on his own in the community.

Appellant's OT from CMH testified that she is the person who recommended the Dual Trike for Appellant. Appellant's OT from CMH testified that she has over 30 years of experience working with patients with autism, that she carefully considered the recommendation of a Dual Trike prior to submission of the prior authorization, and that they have tried with Appellant less cost effective alternatives. Appellant's OT from CMH testified that other patients of hers over the years have been approved for specialized bicycles of similar cost to the one in the instant prior authorization request. Appellant's OT from CMH testified that the Dual Trike would allow Appellant to be physically active, to use his muscles, to get out into the community, and meet his sensory needs. Appellant's OT from CMH testified that she had not been able to try Appellant on a Dual Trike because none of the bike stores in the area had one in stock.

The Department's OT/Consultant responded that she had asked for additional information from Appellant when the prior authorization request was received but did not receive anything further from Appellant or CMH. The Department's OT/Consultant also testified that she was not aware that Appellant had tried other options, such as compression clothing, heavy blankets, and a trampoline, when she made her decision.

Appellant's mother testified that she did not believe it was fair that the Department's OT/Consultant denied the prior authorization request without ever meeting Appellant or speaking to his OT at CMH. Appellant's mother admitted that Appellant does have problems with his feet, but that he would not be walking or running with the Dual Trike, he would be pedaling. Appellant's mother testified that she is frustrated by the denial of the Dual Trike.

This Administrative Law Judge commends the Appellant's mother for her care and advocacy for the Appellant; however he does not possess equitable jurisdiction and as such does not have the authority to order the Department to provide services that do not comport with federal regulation, the Medicaid state plan and state policy. The Department must implement its programs in accordance with the federal law and state policy. Here, the evidence supports the Department's position that there are other more cost effective alternatives that would meet Appellant's needs.

Even though Appellant's mother and his OT from CMH testified that Appellant had tried those other, more cost effective alternatives, they did not say that those other alternatives were ineffective or did not work in some way. Basically, Appellant's mother and OT from CMH testified that the Dual Trike would be a great addition to the sensory stimulation and exercise Appellant already receives and would allow him to get into the community more often. While this is true, it does not change the fact that there are less expensive alternatives for both sensory stimulation, exercise and community integration for Appellant, such as the large stroller with a sun shade recommended by the Department's OT/Consultant.

If Appellant were able to try a Dual Trike, and it was determined that he could pedal, and that the Trike would provide him with the exercise, sensory stimulation and community integration he needs, Appellant could always resubmit another prior authorization request. However, at this time, and based on the information the Department had at the time it made its decision, the Department's decision was proper under federal law and state policy.

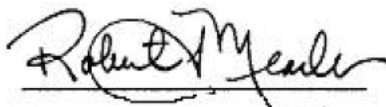
[REDACTED]
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Hearing Decision & Order

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly denied Appellant's prior authorization request for a Workman Team Dual Trike.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.



Robert J. Meade
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

[REDACTED]
cc: [REDACTED]
[REDACTED]

Date Signed: 5/22/2013

Date Mailed: 5/23/2013

***** NOTICE *****

The Administrative Tribunal 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 Administrative Tribunal 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.