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. 2013-27238 PA
[redacted], **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], the Appellant, appeared on his own behalf. [redacted], Appeals Review Officer, represented the Department. [redacted], RN, Medicaid Utilization Analyst, appeared as a witness for the Department.

ISSUE

Did the Department properly deny the Appellant's prior authorization request for a wearable cardioverter defibrillator?

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 did not have insurance at the time of his July 3, 2012 hospitalization. The hospital documented that a Medicaid application was pending. (Appellant Testimony and Exhibit E, pages 7 and 14)

2. On or about [redacted], the Appellant received the wearable cardioverter defibrillator. (Exhibit E, pages 16 and 21; Appellant Testimony)

3. The Appellant's Medicaid application was approved with retroactive coverage to [redacted]. (Exhibit E, page 16)

4. On [redacted], the Department received a prior authorization request from the medical supply company for a rental of the wearable cardioverter defibrillator for the Appellant with date ranges of [redacted]

through [redacted] or [redacted]. (Exhibit E pages 5 and 16) The medical documentation submitted with the prior authorization request included monthly patient compliance reports summarizing weartime. (Exhibit E pages 5-25)

5. On [redacted], the Department denied the prior authorization request because the Appellant was non-compliant with wearing the device. (Exhibit E, pages 3-4)

6. On [redacted], the Michigan Administrative Hearing System received the Appellant's hearing request. (Exhibit D)

7. A one page report summarizing the Appellant's compliance with the wearable cardioverter defibrillator was subsequently obtained. (Exhibit E, page 29)

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 Michigan Department of Community Health (MDCH) Medicaid Provider Manual states:

> **1.7 PRIOR AUTHORIZATION**
> Prior authorization (PA) is required for certain items before the item is provided to the beneficiary or, in the case of custom-fabricated DME or prosthetic/orthotic appliances, before the item is ordered. To determine if a specific service requires PA, refer to the Coverage Conditions and Requirements Section of this chapter and/or the MDCH Medical Supplier/DME/Prosthetics and Orthotics Database on the MDCH website.
>
> PA will be required in the following situations:
>
> - Services that exceed quantity/frequency limits or established fee screens.
> - Medical need for an item beyond MDCH's Standards of Coverage.
> - Use of a Not Otherwise Classified (NOC) code.
> - More costly service for which a less costly alternative may exist.
> - Procedures indicating PA is required as noted on the MDCH Medical Supplier/DME/Prosthetics and Orthotics Database.
>
> ***

1.7.D. RETROACTIVE PRIOR AUTHORIZATION

Services provided before PA is requested will not be covered unless the beneficiary was not eligible on the DOS and the eligibility was made retroactive. If MDCH's record does not show that retroactive eligibility was provided, then the request for retroactive PA will be denied.

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1.10 NONCOVERED ITEMS

Items that are not covered by Medicaid include, but are not limited to:

- Adaptive equipment (e.g., rocker knife, swivel spoon, etc.)
- Air conditioner
- Air purifier
- Devices used for play, pre-mobility development, or exercise are not considered pediatric mobility devices for the purpose of reimbursement and are not covered (e.g., jet mobile, ready racer, creepster crawler)
- Enteral formula to accommodate psychological or behavioral conditions, food preferences, allergies, loss of appetite, or noncompliance with a specialized diet
- Environmental Control Units
- Equipment not used or not used properly by the beneficiary
- Equipment for social or recreational purposes
- Exam tables/massage tables
- Exercise equipment (e.g., tricycles, exercise bikes, weights, mat/mat tables, etc.)
- Generators
- Hand/body wash
- Heating pads
- Home modifications
- Hot tubs
- House/room humidifier
- Ice packs
- Items for a beneficiary who is non-compliant with a physician's plan of care (or) items ordered for the purpose of solving problems related to noncompliance (e.g., insulin pump)

- Items used solely for the purpose of restraining the beneficiary for behavioral or other reasons
- Lift chairs, reclining chairs, vibrating chairs
- More than one pair of shoes on the same date of service
- New equipment when current equipment can be modified to accommodate growth
- Nutritional formula representing only a liquid form of food
- Nutritional puddings/bars
- Over-the-counter shoe inserts
- Power tilt-in-space or reclining wheelchairs for a long-term care resident because there is limited staffing
- Pressure gradient garments for maternity-related edema
- Prosthetic appliances for a beneficiary with a potential functional level of K0
- Regular or dietetic foods (e.g., Slimfast, Carnation instant breakfast, etc.)
- Room dehumidifiers
- School Items (e.g., computers, writing aids, book holder, mouse emulator, etc.)
- Second units for school use
- Second wheelchair for beneficiary preference or convenience
- Sensory Devices (e.g., games, toys, etc.)
- Sports drinks/juices
- Stair lifts
- Standard infant/toddler formula
- Therapy modalities (bolsters, physio-rolls, therapy balls, jett mobile)
- Thickeners for foods or liquids (e.g., Thick – it)
- Toothettes
- Transcutaneous Nerve Stimulator when prescribed for headaches, visceral abdominal pain, pelvic pain, or temporal mandibular joint (TMJ) pain
- Ultrasonic osteogenesis stimulators
- UV lighting for Seasonal Affective Disorder
- Vacu-brush toothbrushes
- Weight loss or "light" products
- Wheelchair lifts or ramps for home or vehicle (all types)
- Wheelchair accessories (e.g., horns, lights, bags, special colors, etc.)

- Wigs for hair loss
- Peri-wash
- Portable oxygen, when oxygen is ordered to be used at night only

MDCH Medicaid Provider Manual,
Medical Supplier Section
July 1, 2012, pages 8, 10 and 17-18
(Underline added by ALJ)

On [redacted], the Department received a prior authorization request from the medical supply company for a rental of the wearable cardioverter defibrillator for the Appellant with date ranges of [redacted] through [redacted] or [redacted]. (Exhibit E pages 5 and 16) The medical documentation submitted with the prior authorization request included monthly patient compliance reports summarizing weartime. (Exhibit E pages 5-25)

The Department submitted a sample of a care plan for a LifeVest cardioverter defibrillator. (Exhibit E page 31) On its own, this sample care plan would not be sufficient to establish that the Appellant was non-complaint with wearing the device. However, the Appellant testified that his doctor said he was supposed to wear the device 24 hours a day 7 days a week and it should only be taken off if he takes a bath. The Appellant did not get the device until a few days into [redacted], as his heart attack was [redacted]. The Appellate also had a hospitalization on or about [redacted], during which he had a balloon procedure for his heart condition. (Appellant Testimony)

The monthly compliance reports document the Appellant's compliance with wearing the device. In [redacted], the Appellant wore the device every day from [redacted] through [redacted] but only an average of 15 hours and 54 minutes per day. (Exhibit E, page 21) In [redacted], the Appellant wore the device only 20 days during the month and only an average of 9 hours and 28 minutes per day. (Exhibit E, page 22) In [redacted], the Appellant wore the device only 27 days during the month and only an average of 19 hours and 32 minutes per day. (Exhibit E, page 23) In [redacted], the Appellant wore the device only 23 days during the month and only an average of 9 hours and 40 minutes per day. (Exhibit E, page 24) No report was included for the month of [redacted]. In [redacted], the Appellant wore the device only 17 days during the month and only an average of 19 hours and 6 minutes per day. (Exhibit E, page 25) The one page summary report for compliance from [redacted] through [redacted] indicates only 4% patient compliance. (Exhibit E page 29)

The Medicaid Provider Manual Policy specifies that equipment that is not used or not used properly by the beneficiary as well as items for a beneficiary who is non-compliant with a physician's plan of care are non-covered. The submitted compliance reports do not show the Appellant used the device as directed by his doctor, 24 hours per day only taking it off to bathe. There was no evidence of any reason, such as a hospitalization,

for the many days in [redacted], [redacted] and [redacted] the Appellant did not wear the device. Even when the Appellant wore the device, the average weartime was far short of 24 hours per day with some allowance for bathing time. Based on the submitted documentation and the Appellant's testimony of the care plan from his doctor, the Department's determination to deny coverage for the wearable cardioverter defibrillator 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 wearable cardioverter defibrillator based on the available information.

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

[redacted]

cc: [redacted]

Date Signed: 5/2/2013

Date Mailed: 5/2/2013

***** 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.