

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

P.O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

██████████,

Appellant

Docket No. 2013-20618 PA
Case No. ██████████

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 ██████████. ██████████ and ██████████, parents, represented the Appellant. ██████████, Appeals Review Officer, represented the Department. ██████████, Medicaid Utilization Analyst, appeared as a witness for the Department.

ISSUE

Did the Department properly deny the Appellant's prior authorization request for a tilt in space stroller style manual 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 ██████-year-old Medicaid beneficiary who has been diagnosed with infantile cerebral palsy, intractable epilepsy, convulsions. (Exhibit A, pages 13-14; Exhibit 5; Exhibit 6)
2. On or about ██████████, the Department received a prior approval request for a tilt in space stroller style manual wheelchair. (Exhibit A, pages 13-26)
3. On ██████████, the Department determined that the prior authorization request should be denied. (Exhibit A, page 13)
4. On ██████████, the Department issued a Notification of Denial to the Appellant. The notice indicated the denial was based on several policy sections, including: the most economical choice for a second wheelchair as a transport chair; the Appellant's current primary mobility

device being a power wheelchair that the family can and does transport; non-coverage for purpose of transport in vehicles other than the family vehicle and/or for school, therapy, social and/or recreational activities and/or preference or convenience; coverage for use in the primary place of residence; non-coverage for a back up when the primary mobility device is out of service being repaired; the current power wheelchair continuing to meet the mobility and positioning medical need or if it can be modified to meet needs; and medical necessity not being substantiated (Exhibit A, pages 10-12)

5. On ██████████, the Michigan Administrative Hearing System received the hearing request filed on the Appellant's behalf. (Exhibit A, pages 5-9)

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.

* * *

1.3 PLACE OF SERVICE [CHANGES MADE 10/1/12]

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.

* * *

1.5.C. DOCUMENTATION

The Coverage Conditions and Requirements Section of this chapter specifies the documentation requirements for individual service areas. Additional information other than what is required on the prescription may be required. To provide this information, Medicaid accepts a certificate of medical necessity (CMNs will be mandatory for electronic PA), a letter or a copy of applicable medical record. The prescribing physician must sign all documentation and the documentation (if a letter or applicable medical records) must state the beneficiary's name, DOB and ID number (if known) or SSN (if known).

* * *

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, high-strength, 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/Certified Medical Professional

A licensed/certified 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/certified medical professional. A physical therapy assistant (PTA) or a certified occupational therapy assistant (COTA) 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

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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 power wheelchairs:

- Lacks ability to propel a manual wheelchair, or has a medical condition that would be compromised by propelling a manual wheelchair, for at least 60 feet over hard, smooth, or carpeted surfaces (this includes the need to rest at intervals).
- Is able to safely control the wheelchair through doorways and over thresholds up to 1½".

- Has a cognitive, functional level that is adequate for power wheelchair mobility.
- Has visual acuity that permits safe operation of a power mobility device.
- Must accommodate growth and adjustments for custom-fabricated seating systems a minimum of 3" in depth and 2" in width.
- For a three-wheeled power mobility device, has sufficient trunk control and balance.

For transport mobility medical devices (e.g., strollers):

- Is over three years of age or has a medical condition that cannot be accommodated by commercial products.
- Will be the primary mobility device due to inability to self-propel a manual wheelchair or operate a power wheelchair.
- Is required as a transport device when the primary wheelchair cannot be designed to be transportable.
- Must accommodate growth and adjustments for seating systems a minimum of 3" in depth and 2" in width.
- Is the most economic alternative available to meet the beneficiary's mobility needs.
- Is required for use in the community residential setting.

* * *

Manual Tilt-in-Space or Recline Function in Community Residential Setting

Manual tilt-in-space function allows the seat and back of the wheelchair to move as a unit, such that the angle of the back to the floor changes from approximately 90 degrees to 45 degrees or less. This change in position does not affect the hip-to-knee angle. The seat may be tilted manually.

The **tilt-in-space** function for a wheelchair may be covered if **one or more** of the following apply:

- History of skin breakdown or current indication of imminent skin breakdown that cannot be controlled (or has not in the past) by less costly modalities (such as pressure relief cushions or manual pressure relief techniques).
- Excessive extensor or flexor muscle tone that is exacerbated by change in hip angle and makes positioning in any upright chair ineffective. State reason why changing angles of position is medically necessary.

- Very low muscle tone that cannot maintain upright positioning against gravity, causing spinal anomalies.
- Beneficiary has knee contractures and a custom-molded seating system.

Coverage of both a **manual tilt-in-space and recline function** for a wheelchair requires medical need (such as high probability of the development of hip contractures) if only a tilt-in-space without recline is used. Also, there is a medical contraindication to using recline-only without the tilt-in-space function.

* * *

Wheelchair Accessories

Reimbursement may be made for separate wheelchair accessories that have designated HCPCS codes. Separate reimbursement may be considered for specific wheelchair accessory codes when provided in conjunction with the purchase of a manual wheelchair, power wheelchair, or an addition to an existing wheelchair if:

- It is required to provide safety.
- It is required for appropriate positioning.
- It is the most economical alternative.

For additions to an existing wheelchair, the physician or the occupational or physical therapist must address the status/condition of the current wheelchair and include the brand, model, serial number, and age of the current wheelchair. If MDCH did not purchase the wheelchair being modified, all documentation requirements must be provided as if the request is for a new or initial wheelchair. Refer to the Non-Covered Items section of this chapter for information on accessories that are not covered.

2.47.C. PRIOR AUTHORIZATION FOR PURCHASE, RENTALS, REPAIRS, AND/OR REPLACEMENT OF MOBILITY DEVICES

Prior Authorization

The Medicaid Utilization Analyst (Program Review Division) is the authorized Medicaid representative who determines if the service requested falls within the standards of coverage. A prior authorization request may be returned or denied if the

documentation is incomplete and not specific to the beneficiary and device requested.

MDCH reserves the right to request additional documentation to determine medical necessity. 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 beneficiaries in the community residential setting, the decision notice is sent to the medical supplier with a copy to the beneficiary. For beneficiaries in the institutional residential setting, the decision notice is sent to the institutional residence with a copy to the beneficiary.

Prior authorization is required for:

- All adult wheelchairs, power-operated vehicles, seating, and accessories.
- Rental of a standard wheelchair beyond three months for hospital discharge waiver.
- New and replacement custom-fabricated seating systems, and the addition of functions for tilt-in-space and/or recline (power or manual).
- Diagnosis/medical conditions that are not listed as approved to bypass prior authorization for pediatric mobility items.
- Replacement of standard wheelchairs beyond established timeframes.

Clinical Documentation

The evaluation and clinical documentation (MSA-1656) must be submitted within 90 days of the date the form is completed.

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.

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Rentals, Repairs and Replacement

A wheelchair can be considered a **capped rental** or a **purchase** item.

Repairs for beneficiary-owned mobility devices are covered only after the manufacturer's warranty has been exhausted. It is the responsibility of the provider to supply loaner equipment while the original item is being serviced. If repair of a wheelchair not purchased by MDCH is requested, the item must be medically necessary and meet the basic standards of coverage. The repair of a second (older) manual or power wheelchair used as a back-up wheelchair is not covered. Repair of a wheelchair involving the replacement of a component part includes the cost of the part and the labor associated with its removal, replacement, and finishing.

MDCH Medicaid Provider Manual,
Medical Supplier Section
October 1, 2012, pages 1, 3-6 and 80-87

Policy also addresses noncovered items, which includes: custom seating for secondary and/or transport chairs; equipment for social or recreational use; second units for school use; second wheelchair for beneficiary preference or convenience; and wheelchair accessories. MDCH Medicaid Provider Manual, Medical Supplier Section, 1.10 Noncovered Items, October 1, 2012, pages 17-18.

The Medicaid Utilization Analyst explained that the Department does not contest that the Appellant has uncontrolled life threatening seizures and at times he cannot drive the power wheelchair. The Department denied the Appellant's prior authorization request for a tilt in space stroller style manual wheelchair as a transport chair. If this was a request for the primary mobility device for the Appellant it could be approved. However, the requested tilt in space stroller style manual wheelchair is not the most economical alternative for a transport chair. The Appellant has a power wheelchair as his primary mobility device. The existing power wheelchair was approved ██████████ with several positioning features as well as an attendant control that allows for a caregiver to drive the power wheelchair when the Appellant is unable. (Exhibit 1, pages 27-31; Medicaid Utilization Analyst Testimony)

The Appellant's parents disagree with the denial and testified that the attendant feature is impractical. It is a small joystick that is very sensitive making it difficult for a caregiver to drive the power wheel chair for the Appellant. The Appellant's power wheelchair was damaged at school when this function was utilized, requiring repairs. The power wheelchair is too heavy to manually push for any distance. When the Appellant is tilted past a certain degree, a safety feature prevents the power wheelchair from being driven. The power wheelchair does not serve the Appellant's needs for significant portions of his life now. The chest device to help control the Appellant's seizures failed. The

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Appellant had another operation, but there has only been some improvement and it is not much better. The Appellant is limited for two to three days following a seizure and would utilize the requested tilt in space stroller style manual wheelchair during that time. Further, the Appellant's parents have to be ready to go on a moment's notice as an emergency can happen at any time. The Appellant has been airlifted three times for respiratory failure and at other times has been taken by ambulance. The Appellant parents have to bring a wheelchair to the hospital with them to be able to take the Appellant back home. The power wheelchair only fits in one of their vehicles. They have tried to utilize the older equipment as long as they could, but the Appellant has outgrown his older stroller and push chair. (Parent's Testimony)

The above cited policy indicates the least costly alternative to meet the medically necessary needs in the primary place of residence is covered. Accordingly, the accessibility issues depicted in the submitted photographs of relative's homes, mom's work and the barbershop can not be considered toward medical necessity. (Exhibits 11-14) The evidence indicates there has been a change in the Appellant's condition related to the seizures since the power wheelchair was authorized in [REDACTED]. The Appellant's parents clearly explained that the Appellant has two sets of needs regarding mobility. The power wheelchair allows for the Appellant to be as independent as possible when he is able. Following a seizure, the Appellant is much more dependant for a few days, and can not drive his power wheelchair. (Parent's Testimony) However, the policy does not allow for two primary wheelchairs. It appears the power wheelchair would still be the primary mobility device. The power wheelchair has the positioning features the Appellant requires as well as an attendant control. The Medicaid Utilization Analyst testified that the sensitivity of the attendant control could be adjusted. (Medicaid Utilization Analyst Testimony) It has not been established that the sensitivity of the attendant control can not be adjusted to allow this feature to be practical for a caregiver to drive the power wheelchair for the Appellant. Further, the current prior authorization request for repairs to the Appellant's power wheelchair implies that this wheelchair can be repaired to meet the Appellant's medical needs for mobility. Accordingly, the Department's denial of the tilt in space stroller style manual wheelchair as a transport chair must be upheld based on the available information.

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 tilt in space stroller style manual wheelchair based on the available information.

IT IS THEREFORE ORDERED that:

The Department's decision is **AFFIRMED**.

ls/

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

cc:

[REDACTED]

Date Mailed: 3/5/2013

***** 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.