

**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:

██████████,

Appellant.

_____ /

Docket No. 2013-30829 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.*, and upon Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. ██████████, Appellant's legal guardian, appeared and testified on Appellant's behalf. ██████████, Appeals Review Officer, represented the Department of Community Health. ██████████, Medicaid Utilization Analyst, appeared as a witness for the Department.

ISSUE

Did the Department properly deny Appellant's prior authorization request for a gait trainer 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. Appellant was born on ██████████ and has been diagnosed with infantile cerebral palsy, microcephaly, triplegia, and cytomegalovirus (CMV). (Respondent's Exhibit A, pages 6, 13).
2. Appellant has a plenary guardian. (Petitioner's Exhibit 1, page 1).
3. On or about ██████████, the Department received a prior authorization request filed on behalf of Appellant and requesting a gait trainer and accessories. (Respondent's Exhibit A, page 12; Testimony of ██████████).
4. In response to that request, the Department sent Appellant a Request for Additional Information. (Respondent's Exhibit A, page 12).
5. The Department's letter stated that it needed the additional information "[i]n order to process this request" (Respondent's Exhibit A, page 12) while also specifically providing:

- Beneficiary has a previously approved stander. Document why this equipment was not used for weight bearing and contracture prevention.
- Please note that E8000 can be approved for beneficiaries 000-020 years old only.

[Respondent's Exhibit A, page 12.]

6. The request for additional information also stated:

Please note that resubmissions are considered new requests. For mailed or faxed requests, failure to submit a newly completed prior authorization request will result in your request being returned to you for this. For electronically submitted requests, a new electronic request must be submitted. The date of the submission **will not** be held should other prior authorization requests for the same services(s) be received. [Respondent's Exhibit A, page 12.]

7. Appellant's school physical therapist wrote and signed a letter on ██████████. The letter addressed the Department's concerns as to why the previously approved stander was not used for weight bearing and contracture prevention. (Respondent's Exhibit A, page 13).
8. Appellant's representative and doctor tried to send the letter to the Department a number of times, starting on ██████████. However, the Department would not accept the information on its own because the Department required that the new information be submitted along with a new application. (Testimony of ██████████; Testimony of Appellant's representative).
9. On or about ██████████, the Department received another prior authorization request for a gait trainer and accessories. (Respondent's Exhibit A, page 6). The additional information requested by the Department was attached to the application. (Testimony of ██████████; Testimony of Appellant's representative).
10. On ██████████, the Department sent Appellant written notice that the prior authorization request was being denied. (Respondent's Exhibit A, pages 9-10). Regarding the reason, the notification states:

The policy this denial is based on is Section 1.4, 1.5, and 2.7 of the Medical Supplier chapter of the Medicaid Provider Manual, which indicates:

E8000 can be approved for beneficiaries age 000-020 years old. Please refer to the Medicaid Supplier Chapter, sections 1.4-Age Limitations, 1.5-Medical Necessity, and 2.7-Children's Products of the Medicaid Provider Policy Manual. [Respondent's Exhibit A, page 12.]

11. On ██████████, the Michigan Administrative Hearing System (MAHS) received a request for hearing filed on behalf of Appellant. (Respondent's Exhibit A, page 5).

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.

Here, the Department denied Appellant's prior authorization request on the basis that Appellant was too old for the requested equipment as it can only be approved for beneficiaries under the age of twenty (20) years-old.

Regarding age limitations, the Medicaid Provider Manual (MPM) generally provides:

1.4 AGE LIMITATIONS

Coverage may be different based on the beneficiary's age. For specifics of HCPCS codes and age parameters, refer to the Coverage Conditions and Requirements Section of this chapter and the MDCH Medical Supplier/DME/Prosthetics and Orthotics Database on the MDCH website. [MPM, January 1, 2013 version, Medical Supplier Chapter, page 4.]

Additionally, regarding the type of equipment requested in this case, the MPM specifically provides:

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.

Payment Rules All children's products are considered **purchase only** items. [MPM, January 1, 2013 version, Medical Supplier Chapter, page 27 (italics added).]

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Accordingly, given the above policy, Appellant would only be eligible for children's products if he was under the age of twenty-one (21) at the time of the prior authorization request.

Despite that clear policy, the Department's evidence and witness identify a different age limitation for the requested equipment. Specifically, ██████████ testified that a beneficiary must be under the age of 20 years-old to be eligible for children's products and that the Department's computer system will not even permit an approval if the beneficiary is a day over 20 years-old. (Testimony of ██████████). Similarly, the letter requesting additional information provides that the requested products "can be approved for beneficiaries 000-020 years old only." (Respondent's Exhibit A, page 12).

Given Appellant's age and the Department's position that a beneficiary must be under the age of 20 years-old to receive children's products, it is not clear why the Department requested any additional information and did not simply deny the prior authorization outright. ██████████ could not explain during her testimony why the Department requested additional information. (Testimony of ██████████). In any event, after receiving additional information that had nothing to do with Appellant's age, the Department subsequently denied the prior authorization request on the basis that Appellant was too old to be approved for the requested equipment. (Testimony of ██████████). Specifically, the Notification of Denial states:

The policy this denial is based on is Section 1.4, 1.5, and 2.7 of the Medical Supplier chapter of the Medicaid Provider Manual, which indicates:

E8000 can be approved for beneficiaries age 000-020 years old. Please refer to Medicaid Supplier Chapter, sections 1.4-Age Limitations, 1.5-Medical Necessity, and 2.7-Children's Products of the Medicaid Provider Policy Manual. [Respondent's Exhibit A, page 9.]

In applying its policy, ██████████ acknowledges that the Department's position conflicts with the applicable version of the MPM. However, she could not explain the conflict or the basis for the Department's position. She did note that the Department's computer system will not even permit an approval if the beneficiary is a day over 20 years-old. (Testimony of ██████████).

This Administrative Law Judge is bound to follow the provisions of the MPM. Therefore, this Administrative Law Judge finds that the Department applied the wrong criteria to Appellant's prior authorization request and that Appellant is eligible for the requested products so long as he was under 21 years-old at the time of the prior authorization request.

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Here, Appellant turned 21 years-old on [REDACTED] and whether he was under 21 years-old at the time of the prior authorization request depends on the date of the prior authorization request denied by the Department. That date is also in dispute in this case.

Appellant's representative asserts that the prior authorization request was made on or about [REDACTED] and that, after the request was supplemented with additional information, the Department denied that [REDACTED] request. (Testimony of Appellant's representative).

Respondent's witness, on the other hand, asserts that the applicable prior authorization request was only received on or about [REDACTED]. According to [REDACTED], while the Department did receive a prior authorization request on or about [REDACTED], that request was rendered moot by the Department's request for additional information and the subsequent receipt of a second prior authorization for the same services. (Testimony of [REDACTED]). As stated in the Department's request for additional information and testified to by [REDACTED], the Department considers the submission of any additional information as a new request, even if the Department requested that additional information, and requires that the beneficiary also submit a newly completed prior authorization request form. (Respondent's Exhibit A, page 12; Testimony of [REDACTED]). The request for additional information letter in this case also states: "The date of submission will not be held should other prior authorization requests for the same service(s) be received." (Respondent's Exhibit A, page 12). Accordingly, when the Department received the additional information and new prior authorization request form in this case on or about [REDACTED], it deemed those documents a new request and treated the earlier request for the same services as moot.

This Administrative Law Judge finds that there is only one prior authorization request in this case and that it was received by the Department on or about [REDACTED]. In response to that request, the Department asked for additional information and while it is proper for the Department to do so when appropriate, that request for additional information did not dispose of the prior authorization request. Instead, it merely delayed the Department's decision and it was still required to make a final determination on the prior authorization request. That final determination would either be an approval or a denial.

Along those lines, the Department's own letter indicates that a final determination will be made after the additional information is received. The request for additional information specifically states: "In order to process this request, the Department needs the following information[.]" (Respondent's Exhibit A, page 12).

There is also no basis for the Department's position that it can request additional information and, if the beneficiary wants to send in that information, the Department can require that the beneficiary complete a new prior authorization request and deem the original request resolved. If the Department is denying a prior authorization request, then it must provide adequate notice of that denial and the right to appeal. Requesting additional information is not a denial. However, by conditioning its consideration of the

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new information in this case on the Appellant making a new prior authorization request, and then subsequently ignoring the original request, the Department is indirectly and improperly denying the original request.

The Department did not deny the ██████████ prior authorization request on the basis that the information submitted failed to justify the requested services. Instead, the Department requested additional information so that it could process Appellant's request. As such, the prior authorization request remained pending and Appellant properly submitted information in response to the Department's request. The Department subsequently denied the prior authorization request and that denial was the first and only decision made by the Department in response to Appellant's ██████████ request. Appellant subsequently appealed that denial.

Given that the prior authorization request denied by the Department was submitted on ██████████, Appellant was under 21 years-old at the time the request was made and the Department erred in determining that he was too old to receive the requested products and denying his prior authorization request on that basis.

In the alternative, Respondent's witness does argue that, while the reason Appellant's prior authorization request was denied was due to age limitations, the requested equipment is also not medically necessary. However, that was not the reason provided in the notification of denial and, beyond some brief testimony during the hearing, there is no evidence that medical necessity was ever considered. Moreover, while the Department did seek some additional information regarding the necessity of the gait trainer, *i.e.* why a previously approved stander was not used for weight bearing and contracture prevention, that question was sufficiently answered by the submitted letter and is not the basis for the Department's claims now.

In light of the Department's error regarding age limitations and the improper reason it denied Appellant's prior authorization request, in addition to the lack of notice and evidence regarding any other reason for denial, this Administrative Law Judge finds that the Department's decision should be reversed and that Appellant's prior authorization request be reassessed. In reassessing that request, the Department must deem the request as being submitted on ██████████ and apply the age limitations identified in the Medicaid Provider Manual.

[REDACTED]
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DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department improperly denied Appellant's prior authorization request.

IT IS THEREFORE ORDERED THAT:

The Department's decision is **REVERSED** and it must reassess Appellant's prior authorization request. In reassessing the prior authorization request, the Department must deem the request as being submitted on [REDACTED] and apply the age limitations identified in the applicable version of the Medicaid Provider Manual.

Steven Kibit

Steven Kibit
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

Date Signed: 5/31/2013

Date Mailed: 5/31/2013

[REDACTED]
cc: [REDACTED]

***** 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.