

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

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IN THE MATTER OF:

**Docket No. 2013-41765 PA**

████████████████████

████████████████████

Appellant

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**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 ██████████ ██████████ Senior Appeals Coordinator, represented the Appellant. ██████████, the Appellant, appeared and testified. ██████████ Appeals Review Officer, represented the Department. ██████████, 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 is a Medicaid beneficiary.
2. On or about ██████████, the Appellant was discharged from the hospital and received the wearable cardioverter defibrillator. (Exhibit 1, pages 10-12)
3. On ██████████, the Department received a prior authorization request from the medical supplier for a rental of the wearable cardioverter defibrillator for the Appellant. (Exhibit 2 page 73)

4. On ██████████ the Department sent a letter to the medical supplier stating additional information was needed, specifically “please provide assessment that you believe patient (s/p CABG with ESRD on hemodialysis, DM, COPD and morbid obesity) will have an expected survival rate of one year.” (Exhibit 2, pages 73-74)
5. The Appellant’s prior authorization request was re-submitted with the requested assessment. (Uncontested)
6. On ██████████, the Appellant’s cardiologist advised the Appellant he could take the wearable cardioverter defibrillator off. (Exhibit 1, pages 51-52)
7. On ██████████, the Department sent a letter to the medical supplier stating additional information was needed, specifically “please submit compliance data.” (Exhibit 2, pages 75-76)
8. On ██████████, the Appellant’s prior authorization request was re-submitted with compliance charts. (Exhibit 1, pages 67-75)
9. On ██████████, the Department denied the prior authorization request because the submitted documentation shows non-compliance with physician plan of care. (Exhibit 1, pages 65-66)
10. On ██████████, the Michigan Administrative Hearing System received the Appellant’s hearing request. (Exhibit 1, pages 1-62)
11. The Department did not have a specific policy in effect addressing compliance with wearable cardioverter defibrillators until ██████████ (Exhibit 1, pages 83-84)

## **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.

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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  
October 1, 2012, pages 8 and 17-18  
(Underline added by ALJ)

On or about ██████████ the Appellant was discharged from the hospital and received the wearable cardioverter defibrillator. (Exhibit 1, page 12) On that same date the Department received a prior authorization request from the medical supplier for a rental of the wearable cardioverter defibrillator for the Appellant. (Exhibit 2 page 73)

On ██████████ the Department sent a letter to the medical supplier stating additional information was needed, specifically "please provide assessment that you believe patient (s/p CABG with ESRD on hemodialysis, DM, COPD and morbid obesity) will have an expected survival rate of one year." It appears the medical supplier did not receive this request until ██████████ (Exhibit 2, pages 73-74) The Appellant's prior authorization request was re-submitted with the requested assessment. (Uncontested)

On ██████████ the Appellant's cardiologist advised the Appellant he could take the wearable cardioverter defibrillator off. (Exhibit 1, pages 51-52)

On ██████████ the Department sent a letter to the medical supplier stating additional information was needed, specifically "please submit compliance data." (Exhibit 2, pages 75-76) It appears the medical supplier did not receive this request until ██████████ On ██████████ the Appellant's prior authorization request was re-submitted with compliance charts. (Exhibit 1, pages 67-75)

On [REDACTED], the Department denied the prior authorization request because the submitted documentation shows non-compliance with physician plan of care. (Exhibit 1, pages 65-66)

The requests for additional information state that resubmissions are considered new requests. (Exhibit 2, pages 73-76) However, when the Department considers a re-submission with requested additional information as new prior authorization request as of the date it is received, it does not appear that the Department ever issues a determination notice to the Appellant for the original prior authorization request date. For example in this case, the denial notice states that the [REDACTED] prior authorization request was denied even though the prior authorization request was originally submitted on [REDACTED]. There is no evidence of a determination notice issued to the Appellant for the [REDACTED] prior authorization request. (Exhibit 1, pages 65-66; Exhibit 2, pages 73-76)

It is also noted that the Department did not include all of the documentation it received for reviewing this prior authorization request in the evidence packet, such as the original [REDACTED] prior authorization request with any included documentation and the first resubmission with the requested assessment of the Appellant's survival rate for one year and any other included documentation. Most of the documentation admitted into evidence was submitted by the Appellant. (Exhibit 1, pages 1-62, Exhibit 2) Therefore, it is not clear what documentation Department had at the time this prior authorization request was being considered.

The Department submitted an [REDACTED] Medical Services Administration (MSA) Bulletin regarding policy for wearable cardioverter defibrillators that went into effect [REDACTED]. (Exhibit 1 pages 83-84) The [REDACTED] MSA policy bulletin cannot be considered in this case because it was not in effect at the time the Appellant's prior authorization request was submitted and under review.

The RN Medicaid Utilization Analyst testified that the Department did not have a specific policy addressing wearable cardioverter defibrillators prior to the [REDACTED] MSA bulletin. The RN Medicaid Utilization Analyst indicated that the Department requested additional information twice in this case, even though typically the Department would only request additional information once and then deny the request if the submitted information was not sufficient to support the medical necessity of the requested service. (RN Medicaid Utilization Analyst Testimony) However, with no policy addressing wearable cardioverter defibrillators in place at the time of the [REDACTED] prior authorization request, it would be difficult for a medical supplier to know what specific documentation it should include with a prior authorization request for the Department to determine medical necessity for the device, such as the assessment of the one year survival rate. Further, the second request for additional information was for compliance data that would not have existed at the time the prior authorization request was initially made on [REDACTED], the same date the Appellant received the device.

The RN Medicaid Utilization Analyst testified that in reviewing compliance, they utilized the medical supplier expectation of ██████ compliance. (RN Medicaid Utilization Analyst Testimony) The medical supplier's documentation lists a target compliance of ██████. However, the medical supplier's documentation also indicates that an alert would not be triggered until ██████ compliance. (Exhibit 1, page 81) Accordingly, it appears that the medical supplier's internal standard actually requires only ██████ compliance.

The monthly compliance reports document the Appellant's compliance with wearing the device. In ██████████ the Appellant wore the device every day from ██████████ through ██████████ with an average daily wear time of ██████ hours and ██████ minutes per day. (Exhibit 1, pages 69-70) In ██████████ the Appellant wore the device every day during the month with an average daily wear time of ██████ hours and ██████ minutes per day. (Exhibit 1, pages 71-72) In ██████████ the Appellant wore the device every day from ██████████ through ██████████ with an average daily wear time of ██████ hours and ██████ minutes per day. (Exhibit 1, pages 73-74) The RN Medicaid Utilization Analyst testified that the Appellant was ██████ in ██████████, 8 ██████ compliant in ██████████ and ██████ compliant in ██████████ (RN Medicaid Utilization Analyst Testimony)

The Appellant also provided testimony regarding his efforts to be as compliant as possible with wearing the device. The Appellant explained that due to his body shape, the device did not fit him well. Initially the Appellant was advised to use two ace bandages to help with the fit, but this did not work. The Appellant also called the support line and asked if he could use three inch tape to try to keep the sensors on. The tape helped some, but sensors would still come loose typically in the middle of the night and would set off an alarm on the device. The Appellant could not reach to re-tape the sensors himself, therefore, some nights he had to take the device off until someone could come over in the morning and help him. (Appellant Testimony) The Appellant's testimony is consistent with the ██████████ cardiology report noting the Appellant has been having skin allergies from the tape that is required to tape the device to his torso. (Exhibit 1, page 51)

When considering compliance it appears all parties have focused on the expectation that the device be worn ██████ hours per day unless showering. However, as noted during the hearing proceedings, the instructions for the device state it should be washed every one to two days. (Exhibit 1, page 13) The Senior Appeals Coordinator testified the garment would be hand washed, and should not be run through machine washer/dryer cycles for cleaning. (Senior Appeals Coordinator Testimony) Presumably, after hand washing, the device would also have to air dry before it could be worn again. While the instructions indicate a second battery is provided, it is unclear whether a second garment is provided that could be worn to avoid a period where the device could not be worn while it is being cleaned daily or every other day.

The above cited 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. It is understandable that the Department would want to ensure the device is being utilized in accordance with the physician's plan of care. However, with the exception of a retroactive prior authorization request, compliance could not be considered at the time of an initial prior authorization request, when the service has either not been provided yet or has just started. In this case the initial prior authorization request was submitted [REDACTED] the day the Appellant was discharged from the hospital with the device. Yet the Department did not make their determination about coverage of the device for the Appellant until [REDACTED], after a second request for additional information to obtain compliance data. The Department did not have a policy in place addressing wearable cardioverter defibrillators and compliance requirements at the time of this prior authorization request. The Department indicated they utilized the [REDACTED] target compliance from the medical supplier documentation as the compliance expectation in this case, but the medical supplier documentation also indicates an alert would not be triggered for compliance until [REDACTED]. The submitted compliance reports establish that the Appellant was compliant with wearing the device well over [REDACTED] of the time. The Appellant also provided testimony of his efforts to be as compliant as possible with the device under the circumstances, which was supported by his medical records. When compliance was being considered, it is not clear that the Department had information from the Appellant and his doctors about the Appellant's circumstances and his efforts to be as compliance as possible considering the difficulty with the fit of the device. Based on the submitted documentation, the Department's determination to deny coverage for the wearable cardioverter defibrillator cannot be upheld and the prior authorization request should be re-processed.

Additionally, the Department wrote on the [REDACTED] re-submission of the prior authorization request form that the Appellant's Medicaid eligibility ended [REDACTED]. (Exhibit 1, page 67) Accordingly, the RN Medicaid Utilization Analyst testified the Department could not entertain coverage in [REDACTED] (RN Medicaid Utilization) However, no evidence was submitted of the Appellant's Medicaid eligibility history to support this notation. Further, sometimes the Department makes additional Medicaid eligibility determinations and some are made retroactive. Accordingly, in re-processing this prior authorization request, the Department should again review the Appellant's Medicaid eligibility history to determine if coverage can be considered for the few days in [REDACTED] the Appellant wore the device

### **DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department improperly denied the Appellant's request for a wearable cardioverter defibrillator based on the available information.

