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:

[redacted], **Docket No.** 2013-41766 PA
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]. The Appellant was represented by [redacted]. He had no witnesses. [redacted], Appeals Review Officer, represented the Department. His witness was [redacted] R.N., Program Review Division.

ISSUE

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

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. The Appellant is a [redacted]-year old man with a diagnosis of dilated Cardiomyopathy now with successfully Implanted Cardiac Device (ICD). (Department's Exhibit A, p. 12 and *See* Testimony)

3. On [redacted], the Department, Ancillary Review Section, received a prior authorization request from the medical supplier for the rental [reimbursement] of the WCD for the Appellant. (Department's Exhibit A, p. 12)

4. On [redacted], the Department sent a letter to the medical supplier denying the request because the Appellant had been non-compliant in

wearing the vest. (Department's Exhibit A, p. 2)

5. On [redacted] the Michigan Administrative Hearing System received the Appellant's hearing request. (Appellant's Exhibit 1, p. 3)

6. While the Department did not have a specific policy in effect addressing use of the WCD until [redacted], They based their decision on medical necessity and the medical suppler chapter of the MPM – which has, historically, not covered items neither used nor misused [non-compliance] by the Medicaid beneficiary. [*See* MPM- 1.10 Medical Supplier, page 17, July 1, 2010]

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:

> **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 (Emphasis supplied)

MPM, Medical Supplier, §§1.7 and 1.10
October 1, 2012, pages 8 and 17-18

On [redacted], the Appellant was discharged from the hospital and received the WCD. On [redacted] further use of the device was denied by the Department owing to beneficiary non-compliance and lack of medical necessity [his ejection fraction being too high]. *See* Department Ex. A. page 87.

The Department's witness, [redacted], testified that upon monitoring they determined that the Appellant's compliance rate – over months of use – was between 70 and 85 per cent. The medically necessary goal, established by the Department, required compliance at 95 per cent – or basically full time use with a "…hour off for bathing and personal chores." Witness [redacted] noted that the goal established by the Appellant's provider was 92 per cent compliance – which was not achieved either.

The Appellant's representative testified that the Appellant underwent successful implant of ICD in [redacted] - but that his lower than expected rate of WCD compliance was the result of unanticipated problems with fit and technical adjustment – neither the fault of the beneficiary or Zoll. She said that the compliance goals were targets – not rules.

On review, the Appellant was a high risk cardiac patient who certainly – in the beginning - seemed to merit use of a WCD. The beneficiary, however, also has free will and for whatever reasons chose not to wear the WCD as required by either his provider or the Department's standard. The Department of Community Health has never been required to provide DME to a non-compliant beneficiary such as this Appellant.

As the testimony proved - there is no protection – if the vest is not worn.

The monthly compliance reports document the Appellant's lack of compliance with wearing the device. In [redacted], the Appellant wore the device for the second half of the month with an average wear time of 21 hours and 18 minutes per day. In [redacted] the Appellant wore the device every day during the month with an average daily wear time of 12 hours and 24 minutes a day. In [redacted] the Appellant wore the device for only 22 days with an average daily wear time of 13 hours and 4 minutes per day. The ensuing months through [redacted] showed no higher average daily use than 12 hours and 14 minutes in the month of [redacted]. *See* Department's Exhibit A at pages 70 – 88.

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.

The Appellant has failed to preponderate his burden of proof that the Department erred in the denial of his request for WCD [reimbursement].

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 [reimbursement] of a WCD.

IT IS THEREFORE ORDERED that:

The Department's decision is affirmed.

\s\
Dale Malewska
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

[redacted]

cc: [redacted]

Date Signed: 7/22/2013

Date Mailed: 7/22/2013

***** 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.