

**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. 2013-49500 QHP

██████████

██████████

**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 ██████████ the Appellant, appeared on his own behalf. ██████████ Appeals Coordinator, represented ██████████, the Medicaid Health Plan ("MHP"). ██████████, Medical Director, appeared as a witness for the Respondent MHP.

**ISSUE**

Did the Medicaid Health Plan properly deny the Appellant's request for a replacement CPAP machine?

**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 is enrolled in ██████████, a Department of Community Health contracted MHP.
2. The Appellant has been diagnosed with organic obstructive sleep apnea. (Exhibit 1, page 8)
3. On ██████████, a request for a respiratory assist device was submitted to the MHP by Appellant's provider. Included was DME prescription to repair CPAP machine as needed and a Device Beyond Repair Report stating the Appellant's "unit is severely contaminated from tobacco smoke; all internal components are heavily soiled and damaged." (Exhibit 1, pages 5-9)

4. On ██████████, the MHP sent a letter to the Appellant stating that the request was denied because the information sent shows the unit is severely contaminated from tobacco smoke. Under the Michigan Department of Community Health Medicaid Provider Manual, an item that is damaged will not be replaced when the damage was a result of misuse or abuse by the beneficiary or caregiver. (Exhibit 1, pages 10-13)
5. On ██████████ the Michigan Administrative Hearing System received the Appellant's request for hearing.

### **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.

On ██████████7, the Department received approval from the Health Care Financing Administration, U.S. Department of Health and Human Services, allowing Michigan to restrict Medicaid beneficiaries' choice to obtain medical services only from specified Medicaid Health Plans.

The Respondent is one of those Medicaid Health Plans.

The covered services that the Contractor has available for enrollees must include, at a minimum, the covered services listed below. The Contractor may limit services to those which are medically necessary and appropriate, and which conform to professionally accepted standards of care. The Contractor must operate consistent with all applicable Medicaid provider manuals and publications for coverages and limitations. If new services are added to the Michigan Medicaid Program, or if services are expanded, eliminated, or otherwise changed, the Contractor must implement the changes consistent with State direction in accordance with the provisions of Contract Section 2.024.

Although the Contractor must provide the full range of covered services listed below they may choose to provide services over and above those specified. The covered services provided to enrollees under this Contract include, but are not limited to, the following:

**Docket No. 2013-49500 QHP**  
**Decision and Order**

- Ambulance and other emergency medical transportation
- Blood lead testing in accordance with Medicaid Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) policy
- Certified nurse midwife services
- Certified pediatric and family nurse practitioner services
- Chiropractic services
- Diagnostic lab, x-ray and other imaging services
- Durable medical equipment (DME) and supplies
- Emergency services
- End Stage Renal Disease services
- Family planning services (e.g., examination, sterilization procedures, limited infertility screening, and diagnosis)
- Health education
- Hearing and speech services
- Hearing aids
- Home Health services
- Hospice services (if requested by the enrollee)
- Immunizations
- Inpatient and outpatient hospital services
- Intermittent or short-term restorative or rehabilitative services (in a nursing facility), up to 45 days
- Restorative or rehabilitative services (in a place of service other than a nursing facility)
- Medically necessary weight reduction services
- Mental health care – maximum of 20 outpatient visits per calendar year
- Out-of-state services authorized by the Contractor
- Outreach for included services, especially pregnancy-related and Well child care
- Parenting and birthing classes
- Pharmacy services
- Podiatry services
- Practitioners' services (such as those provided by physicians, optometrists and dentists enrolled as a Medicaid Provider Type 10)
- Prosthetics and orthotics
- Tobacco cessation treatment including pharmaceutical and behavioral support

- Therapies (speech, language, physical, occupational) excluding services provided to persons with development disabilities which are billed through Community Mental Health Services Program (CMHSP) providers or Intermediate School Districts.
- Transplant services
- Transportation for medically necessary covered services
- Treatment for sexually transmitted disease (STD)
- Vision services
- Well child/EPSTDT for persons under age 21

Article 1.020 Scope of [Services],  
at §1.022 E (1) contract, 2010, p. 22.

(1) The major components of the Contractor's utilization management (UM) program must encompass, at a minimum, the following:

- Written policies with review decision criteria and procedures that conform to managed health care industry standards and processes.
- A formal utilization review committee directed by the Contractor's medical director to oversee the utilization review process.
- Sufficient resources to regularly review the effectiveness of the utilization review process and to make changes to the process as needed.
- An annual review and reporting of utilization review activities and outcomes/interventions from the review.
- The UM activities of the Contractor must be integrated with the Contractor's QAPI program.

(2) Prior Approval Policy and Procedure

The Contractor must establish and use a written prior approval policy and procedure for UM purposes. The Contractor may not use such policies and procedures to avoid providing medically necessary services within the coverages established under the Contract. The policy must ensure that the review criteria for authorization decisions are applied consistently and require that the reviewer consult with the requesting provider when appropriate. The policy

must also require that UM decisions be made by a health care professional who has appropriate clinical expertise regarding the service under review.

....

Contract, *Supra*, p. 49

As stated in the Department-MHP contract language above, a MHP, “must operate consistent with all applicable Medicaid Provider Manuals and publications for coverages and limitations.” The pertinent sections of the Michigan Medicaid Provider Manual (MPM) state:

### **1.8.C. REPAIRS AND REPLACEMENT PARTS**

Repairs and the replacement of component parts for DME owned by the beneficiary are reimbursable if MDCH purchased the item. If MDCH did not purchase the original item, it must be medically necessary, meet the Standards of Coverage detailed in this chapter, and include the required supporting documentation.

For purchased items, all conditions of the warranty must be followed prior to requesting any repairs or replacement parts. Routine periodic servicing, such as cleaning, testing, regulating, and checking of equipment, is also included in the cost of the equipment. If equipment is found to be defective or not operating properly, it must be removed from service and cannot be placed into use again until it is brought up to manufacturer's operating standards and specifications. It is the responsibility of the provider to supply loaner equipment while the beneficiary-owned item is being serviced at no charge to MDCH. For audit purposes, all suppliers must maintain protocols and records defining how the maintenance of equipment is to be achieved.

MDCH will consider reimbursement for a replacement when it is more costly to repair than replace. When submitting a PA request for a replacement, the provider must provide a statement regarding the cost to repair the service versus replacement.

\*\*\*

MDCH will not replace an item due to damage to the item as a result of misuse or abuse by the beneficiary or the caregiver. If damage to an item is the result of theft or car accident, attempts should be made to collect the full or

partial payment from the third party's insurance company, if applicable. A copy of the police or fire report must be submitted with the PA request form.

MDCH Medicaid Provider Manual,  
Medical Supplier Section,  
April 1, 2013, Pages 14-16

On ██████████, a request for a respiratory assist device was submitted to the MHP by Appellant's provider. (Exhibit 1, pages 5-9) Included was DME prescription to repair CPAP machine as needed. (Exhibit 1, page 8) Also included was a Device Beyond Repair Report stating the Appellant's "unit is severely contaminated from tobacco smoke; all internal components are heavily soiled and damaged." (Exhibit 1, page 7) Accordingly, the MHP denied the Appellant's prior authorization request for a replacement CPAP machine under the Michigan Department of Community Health Medicaid Provider Manual, policy that states an item that is damaged will not be replaced when the damage was a result of misuse or abuse by the beneficiary or caregiver. (Medical Exhibit 1, page 10; Director Testimony)

The Appellant disagrees with the denial and testified the Device Beyond Repair Report does not include the error code he reported. The unit would display a system error code, 1029. The Appellant stated he would have to unplug the unit for an hour, then it would run for about two hours, then stop working and display the error code again. Further, the Appellant asserted his unit was not severely smoke damaged. The Appellant stated maybe once a year he visits family who smoke, but the unit was kept away from the smoke and only used in a separate room with the door closed when the Appellant slept at night. (Appellant Testimony)

As noted by this ALJ during the ██████████ telephone hearing proceedings, the Device Beyond Repair Report only identified the CPAP unit by serial number. At this ALJ's request, the Appellant read the serial number from his CPAP machine, which matched the serial number listed on the Device Beyond Repair Report. (Exhibit 1, page 7, Appellant Testimony)

The Medical Director indicated that if the Device Beyond Repair Report had only shown a malfunction, such as a system error code, repair or replacement would have been authorized. However, the Medical Director also confirmed that even if the error code had been added to the existing report, it would not have changed the MHP's determination because the information provided stated all internal components are heavily soiled and damaged from severe tobacco smoke contamination. (Medical Director Testimony)

The documentation submitted to the MHP indicated the Appellant's CPAP machine was not repairable and that the damage was due to severe contamination from tobacco smoke. (Exhibit 1, page 7) While the Appellant asserted his unit was not damaged by tobacco smoke, the serial number the Appellant read from his CPAP machine was the

