

**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.<sup>1</sup>

Docket No. 2013-52658 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 a Request for a Hearing filed on behalf of the minor Appellant.

After due notice, a hearing was held on ██████████. ██████████ from the ██████████ at ██████████ appeared on Appellant's behalf. ██████████, Appeals Review Officer, represented the Department of Community Health. ██████████, Consultant Reviewer, appeared as a witness for the Department.

**ISSUE**

Did the Department properly deny Appellant's prior authorization request for a Prentke Romich Company Accent 1000 speech device?

**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 is a Medicaid beneficiary born on ██████████. (Respondent's Exhibit A, page 5).
2. Appellant has been diagnosed with Autism. (Respondent's Exhibit A, pages 5, 13).
3. On or about ██████████, the Department received a prior authorization request filed on behalf of Appellant and requesting a Prentke Romich Company Accent 1000 speech device. (Respondent's Exhibit A, page 13).

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<sup>1</sup> The Notice of Hearing incorrectly identified the appellant as ██████████, the minor Appellant's mother. However, it is clear that she and Appellant's representative filed the Request for Hearing on behalf of ██████████ and that he is the named Appellant in this matter.

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4. In response to Appellant's request, the Department requested additional information. (Respondent's Exhibit A, pages 14-15).
5. That request for additional information stated in part:

In order to process this request, the Department needs the following information:

- Please forward current school records (IEP report, goals, teacher report). Occupational therapy report addressing device access and safety along with mobility with device.
- Need trials with cost-effective speech generating devices. All available device [sic] between \$1,500.00 and \$5,000.00 have not been ruled out.
- Explain the need for 30 hours of device training. This is a medical program. Goals are not medical. 4 hours are usually offered.
- With a receptive language age of 2 years and 9 months, explain how goals relate. All goals must have baselines, be objective and measurable with person(s) responsible for training identified.

Please note that resubmissions are considered new requests. For mailed or faxed requests, failure to submit a newly completed prior authorization request form will result in your request being returned to you.

*Respondent's Exhibit A, page 10*

6. On or about [REDACTED], the Department received a new and updated request for the speech device. (Respondent's Exhibit A, pages 5, 22-63).
7. As part of that request, Appellant submitted a number of records from Appellant's school and a letter from the school's occupational therapist. (Respondent's Exhibit A, pages 47-63).
8. Appellant also submitted written Response to Request for Additional Information along with the new prior authorization request. (Respondent's Exhibit A, pages 22-23).

9. That unsigned response was dated ██████████ and states in part:

To Whom It May Concern:

**Trials with cost-effective speech generating devices.**

These systems and devices were tried and abandoned as part of his speech therapy intervention before the request was made to try higher end technology. That is why they were not included in the initial report.

**Need trials with cost-effective speech generating devices.**

Lower tech communication systems used with ██████████ in the past included:

Picture exchange: Started using pictures for communication in ECSEP classroom . . . was abandoned as a communication system because it did not provide ██████████ with the variety and volume of vocabulary he wanted to communicate.

Tech Talk 4: Introduced in ██████████ and used in ECSEP classroom . . . but did not provide enough options for growing communication needs . . . awkward to change the overlays and to predict which overlay he would want . . .

iPad with ProLoQuo2Go was tried ██████████. The set up proved confusing . . . He had trouble remembering where icons were or finding unique vocabulary . . . spent a lot of time scrolling . . . with no real communication relevant to the moment.

At this point other devices were tried. They are listed in the report under SGD Assessment or Trial.

*Respondent's Exhibit A, page 22*

10. The response also provided:

**Explain the need for 30 hours of device training. This is a medical program. Goals are not medical. 4 hours are usually offered.**

Our take on the training is that the school speech therapy sessions will be adequate to train him and to complete his goals. No additional outside speech service will be necessary.

██████████'s IEP goals align with the Functional Communication Goals in the Funding Request Report . . .

*Respondent's Exhibit A, page 23*

11. The response further stated:

**With a receptive language age of 2 years and 9 months, explain how goals relate. All goals must have baselines, be objective and measurable with person(s) responsible for training identified.**

██████████ tested at a receptive language age of 2 years 9 months. However, his functional receptive language appears to be like that of a student who is in kindergarten . . .

Baseline: ██████████ has been working on using a device for communication. He has been able to navigate the device to make simple requests and comments. We continue to expand on this . . .

The functional communication goals will be measured by the school speech pathologist and teacher . . . The long term goals will be incorporated into his IEP communication goals.

*Respondent's Exhibit A, page 23*

12. On ██████████, the Department sent Appellant a Notification of Denial. (Respondent's Exhibit A, pages 7-8).

13. Specifically, the denial stated:

The policy this denial is based on is Section 1-Overview of the Medical Supplier chapter of the Medicaid Provider Manual, which indicates:

- Medicaid can only cover medical diagnoses, Autism is not considered a medical condition at this time therefore Medicaid cannot cover services for this diagnosis.

*Respondent's Exhibit A, page 7*

14. On ██████████, the Michigan Administrative Hearing System (MAHS) received a Request for Hearing filed on behalf of Appellant. (Petitioner's Exhibit 1, pages 1-2).

## **CONCLUSIONS OF LAW**

### **Timeliness of Appeal**

As a preliminary matter, the Department's representative moved for dismissal at the onset of the hearing on the basis that Appellant's Request for Hearing was untimely.

The Social Security Act and the federal regulations which implement the Social Security Act require an opportunity for fair hearing to any recipient who believes the Department may have taken an action erroneously. See 42 CFR 431.200 *et seq.* However, the opportunity for fair hearing is limited by a requirement that the request be made within 90 days of the Department's mailing of the notice of action:

Request for hearing.

\* \* \*

(d) The agency must allow the applicant or recipient a reasonable time, not to exceed 90 days from the date that notice of action is mailed, to request a hearing. [42 CFR 431.221(d).]

Therefore, this Administrative Law Judge only has jurisdiction to hear cases brought timely.

Here, Appellant is appealing the denial of his prior authorization request for a Prentke Romich Company Accent 1000 speech device. The Department mailed notice of the denial to Appellant on ██████████ while the Request for Hearing was not stamped as received by MAHS until ██████████. Accordingly, it appears that the appeal was filed after the 90 day deadline and is therefore untimely.

However, as argued by Appellant's representative, while the Request for Hearing itself is stamped as received by MAHS on ██████████, the fax cover sheet accompanying the request states that the request was sent on ██████████ and the fax heading on the top of the request itself also indicates that it was faxed over on ██████████. A ██████████ filing would be timely and it appears that the Request for Hearing was properly filed on ██████████, but mistakenly stamped as received a few days later when actually entered into the MAHS filing system.

Based on that evidence, this Administrative Law Judge finds that the Request for Hearing was timely filed on ██████████ and that he has jurisdiction to hear this matter.

### Notice of Denial

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.

Title 42 of the Code of Federal Regulations also addresses the notice that is required for Medicaid fair hearings such as this one. For example, 42 C.F.R. § 431.205(d) generally provides that the State's "hearing system must meet the due process standards set forth in *Goldberg v. Kelly*, 397 U.S. 254 (1970), and any additional standards specified in this subpart." As made clear in *Goldberg*, 397 U.S., at 267, 90 S.Ct., at 1020, the Due Process Clause normally requires "timely and adequate notice detailing the reasons" for proposed adverse administrative action. Similarly, 42 CFR 431.210 expressly provides that the notice required in this action must contain a statement of what action the State intends to take and the "reasons for the intended action".

In this case, the Department failed to give adequate notice of the reason(s) for the denial of Appellant's prior authorization request and its decision must therefore be reversed.

As discussed above, the Notification of Denial sent to Appellant states that

The policy this denial is based on is Section 1-Overview of the Medical Supplier chapter of the Medicaid Provider Manual, which indicates:

- Medicaid can only cover medical diagnoses, Autism is not considered a medical condition at this time therefore Medicaid cannot cover services for this diagnosis.

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During the hearing, however, the Department did not present any evidence or argument that Medicaid can only cover medical diagnoses; autism is not considered a medical condition; or that Medicaid cannot cover services for this diagnosis. In fact, the Department's witness testified that she only reviewed the prior authorization request in terms of the specific policy governing requests for speech-generating devices and that her review has nothing to do with autism or whether autism is a medical diagnosis/condition. Moreover, to the extent she even had an opinion on the issue identified in the notice, the Consultant Reviewer appears to believe that a diagnosis of autism could justify Medicaid services and a speech device in certain situations. Following that testimony, the Department's representative referred this Administrative Law Judge back to the Department's witness and failed to offer any argument that a diagnosis of autism precludes approval in this case.

The Department's witness did testify that Appellant's request was denied on the basis that less costly alternatives may exist that can meet Appellant's needs. In the Department's request for additional information, it requested more information on trials with cost-effective speech generating devices and how devices costing between \$ [REDACTED] and \$ [REDACTED] were ruled out. It also requested information on how Appellant's goals related to his need for this high-end device, given that the documents submitted stated that he has a receptive language age of 2 years and 9 months. Appellant sent in a response and additional information to the Department, but, according to the Department's Consultant Reviewer, that information was insufficient as some of the less costly alternatives described were inapplicable to the Department's review while other systems and devices were not tried or identified. In particular, the Department's witness could not find that the requested, sophisticated device was the most economical alternative given that Appellant's request only identified low-end goals and, rather than related those goals to his need for the sophisticated and high-end device he requested, Appellant's additional information merely made broad and unsupported statements that Appellant's functional receptive language appears to be like that of a student who is in kindergarten despite the fact that he tested at a receptive language age of 2 years 9 months.

However, the reasons for the denial given by the Department's witness were not the reasons identified in the Notification of Denial and, by relying solely on the previously unidentified reasons during the hearing, the Department failed to satisfy the notice requirements set forth in the Code of Federal Regulations. Accordingly, its decision must be reversed.

Appellant's representative agrees that the notice is defective and argues that, consequently, Appellant should prevail on his appeal and that the request for a speech device should be granted. However, given the Consultant Reviewer's testimony, this Administrative Law Judge finds that significant questions remain regarding whether Appellant meets the criteria and standards of coverage for the particular speech device he requested and will therefore only order that a new assessment be initiated. This Administrative Law Judge appreciates Appellant's representative position that, given the defective notice, he only prepared for the issue identified in the denial and would have

addressed those other questions had Appellant been properly notified. Nevertheless, Appellant bears the ultimate burden of proving that his prior authorization request should be granted and, based on the record in this case, this Administrative Law Judge is unable to find that Appellant has met that burden.

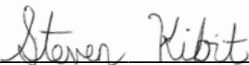
Given the defective notice in this case, the Department's decision to deny Appellant's prior authorization request must be reversed and a new assessment of Appellant's request must be completed.

**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 for a speech device.

**IT IS THEREFORE ORDERED THAT:**

The Department's decision is **REVERSED** and it must initiate a redetermination of Appellant's prior authorization request.



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

Date Signed: 9/13/2013

Date Mailed: 9/13/2013

[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.