

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**
P.O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

Docket No. 2014-34872 PA
[REDACTED]

[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], M.S., O.T.R.L., appeared and testified on the Appellant's behalf. Appellant's father [REDACTED] also testified on the Appellant's behalf. [REDACTED], Appeals Review Officer, represented the Department. [REDACTED], M.S. O.T., Medicaid Utilization Analyst with the Program Review Division appeared as a witness for the Department.

ISSUE

Did the Department properly deny the Appellant's prior authorization request for a Clarke Aquatec bath lift with 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. The Appellant is a [REDACTED]-year-old Medicaid beneficiary ([REDACTED]) (Testimony).
2. The Appellant has been diagnosed with Retts syndrome, scoliosis, acid reflux, seizure disorder, and hiatal hernia. (Exhibit A, pp. 24, 29 and testimony).
3. On [REDACTED] [REDACTED] 2013, the Department received a Prior Approval-Request/Authorization form from [REDACTED] requesting a Clarke Aquatec bath lift with accessories for the Appellant. (Exhibit A, p. 26).

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4. On ██████████, the Department sent ██████████ a Request for Additional Information requesting the Provider to rule out economic alternatives and to provide medical necessity for the Appellant being submerged in water. (Exhibit A, p. 26).
5. On ██████ ██████ ██████ the Department received the Prior Approval-Request/Authorization form along with medical documentation from ██████████ requesting a Clarke Aquatec bath lift with accessories for the Appellant. (Exhibit A, pp. 23-33).
6. On ██████████, the Department reviewed Appellant's PA request and disapproved the request finding that the request did not meet standards of coverage for the Clarke Aquatec bath lift with accessories as there are economical alternatives available to the requested equipment. The Department also did not find medical necessity for submerging the Appellant for purposes of bathing. (Exhibit A, p. 23 and testimony).
7. On ██████████, the Department denied the prior authorization request because there are economical alternatives available to the requested equipment, and the denial also cited the policy relating to medical necessity. (Exhibit A, pp. 21-22).
8. On ██████ ██████ ██████, the Department received another Prior Approval-Request/Authorization form and medical documentation from ██████████ requesting the same item, a Clarke Aquatec bath lift with accessories for the Appellant. (Exhibit A, pp. 11-20).
9. On ██████████, the Department sent the Appellant a "No Action Required" notice stating the requested item had been denied on ██████████. (Exhibit A, p. 10).
10. On ██████████, MAHS received the Appellant's hearing request. (Exhibit A, pp. 4-9).

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 Medical Supplier chapter of the Medicaid Provider Manual provides coverage limits for medical supplies and requires prior authorization for certain items before they may be provided to a Medicaid beneficiary. This section states in part:

SECTION 1 – PROGRAM OVERVIEW

This chapter applies to Medical Suppliers/Durable Medical Equipment and Orthotists/Prosthetists.

* * *

Durable Medical Equipment (DME)

DME are those items that are Food and Drug Administration (FDA) approved, can stand repeated use, are primarily and customarily used to serve a medical purpose, are not useful to a person in the absence of illness or injury, and can be used in the beneficiary's home. Examples are: hospital beds, wheelchairs, and ventilators. DME is a benefit for beneficiaries when:

- It is medically and functionally necessary to meet the needs of the beneficiary.
- It may prevent frequent hospitalization or institutionalization.
- It is life sustaining.

* * *

1.5 MEDICAL NECESSITY

Medical devices are covered if they are the most cost-effective treatment available and meet the Standards of Coverage stated in the Coverage Conditions and Requirements Section of this chapter.

The medical record must contain sufficient documentation of the beneficiary's medical condition to substantiate the necessity for the type and quantity of items ordered and for the frequency of use or replacement. The information should include the beneficiary's diagnosis, medical condition, and other pertinent information including, but not limited to, duration of the condition, clinical course, prognosis, nature and extent of functional limitations, other therapeutic interventions and results, and past experience with related items. Neither a physician's order nor a certificate of medical necessity by itself provides sufficient documentation of medical necessity, even though it is signed by the treating physician. Information in the medical record must support the item's medical necessity and substantiate that the medical device needed is the most appropriate economic alternative that meets MDCH standards of coverage.

Medical equipment may be determined to be medically necessary when all of the following apply:

- The service/device meets applicable federal and state laws, rules, regulations, and MDCH promulgated policies.
- It is medically appropriate and necessary to treat a specific medical diagnosis, medical condition, or functional need, and is an integral part of the nursing facility daily plan of care or is required for the community residential setting.
- The function of the service/device:
 - meets accepted medical standards;
 - practices guidelines related to type, frequency, and duration of treatment; and
 - is within scope of current medical practice.
- It is inappropriate to use a nonmedical item.
- It is the most cost effective treatment available.
- The service/device is ordered by the treating physician, and clinical documentation from the medical record supports the medical necessity for the request (as described above) and substantiates the physician's order.
- The service/device meets the standards of coverage published by MDCH.
- It meets the definition of Durable Medical Equipment (DME), as defined in the Program Overview section of this chapter.
- Its use meets FDA and manufacturer indications.

Medicaid will not authorize coverage of items because the item(s) is the most recent advancement in technology when the beneficiary's current equipment can meet the beneficiary's basic medical/functional needs.

* * *

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.

* * *

1.10 NONCOVERED ITEMS [CHANGE

Items that are not covered by Medicaid include, but are not limited to:

* * *

- Adaptive equipment (e.g., rocker knife, swivel spoon, etc.)

* * *

- 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)

* * *

- Exercise equipment (e.g., tricycles, exercise bikes, weights, mat/mat tables, etc.)

* * *

- Sensory Devices (e.g., games, toys, etc.)
- Therapy modalities (bolsters, physio-rolls, therapy balls, jett mobile)[*Medicaid Provider Manual, Medical Supplier*, pp. 1, 4-5, 8, 17-19].

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In the present case, the Department determined that Appellant's PA request for the Clarke Aquatec bath lift with accessories did not meet standards of coverage as there are economical alternatives available to the requested equipment and the documentation submitted with the PA request did not demonstrate medical necessity for submersion of the Appellant for proper bathing.

The Department analyst stated the Department reviewed the Appellant's PA request that was received following a request for additional information and denied the PA request for the Clarke Aquatec bath lift with accessories. The Department analyst stated the information submitted with the PA request did not rule out economic alternatives, such as a sponge bath, or use of a Riston, which is a device similar to a lawn chair that may be used to place the Appellant at the same level as the requested bath lift for bathing purposes using a hand shower or hand pouring of water for bathing the Appellant. The Department analyst stated the denial letter indicated the Appellant could resubmit the PA request for economical alternatives.

The Department analyst cited the policy from the Medicaid Provider Manual and stated the information submitted with the PA request did not show medical necessity for submersing the Appellant for bathing purposes and did not rule out the most economical alternatives available as required by policy. The Department analyst stated they can approve the most cost effective durable medical equipment available that meets a medical necessity. She noted the policy identifies non-covered items, such as items used for social or recreation purposes, exercise equipment, sensory devices, and therapy modalities.

The Department analyst stated Appellant's occupational therapist attempted to establish medical necessity for submersion in the water, thus supporting the requested bath lift, but the benefits cited by Appellant's therapist implicated the non-covered items listed in the Medicaid policy. Appellant's therapist indicated submersion in the water results in: an increase in social interaction as it increases the Appellant's relaxation, an increase in range of motion, and also it facilitates movement, and positioning. The Department analyst pointed out that none of these cited benefits relate to medical necessity for bathing purposes, and therefore, they cannot be covered by Medicaid. The Department analyst noted the policy states that durable medical equipment (DME) is a benefit for beneficiaries when it is medically and functionally necessary to meet the needs of the beneficiary, it may prevent frequent hospitalization or institutionalization, or if it is life sustaining. The Department analyst concluded that the requested bath lift was not supported by the information submitted with the PA request. It was not shown to be medically necessary, it does not meet the definition of durable medical equipment, and it was not shown to be the most cost effective alternative for properly bathing the Appellant.

The Department analyst acknowledged that a second PA request received in ██████████ ██████████ resulted in the Department sending out a "No Action Required" notice stating the requested item had been denied on ██████████.

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██████████, the Appellant's occupational therapist testified concerning the Appellant's diagnoses and medical condition. ██████████ stated she believed it is medically necessary for the Appellant to be submerged while bathing. ██████████ stated she understood that items for social, recreational, and exercise purpose are not considered medically necessary, (i.e., items requested for these purposes are not covered items). She stated these were just additional advantages that could be provided by the requested bath lift. ██████████ stated maintaining appropriate hygiene was also important and in her opinion was medically necessary.

██████████ referred to her "Addendum" dated ██████████ where she addressed economical alternatives. (See Exhibit A, pp. 24-25). ██████████ opined that there wasn't anything that was more economical that would be the Appellant's needs besides the requested bath lift. ██████████ acknowledged that she did not address the question of whether sponge bathing was adequate to meet the Appellant's needs in the information submitted with the PA request. ██████████ stated other bath chairs were ruled out and this was mentioned in her addendum. The addendum ruled them out because they either did not allow for submersion or they did not provide the same benefit to the caregiver for safely raising and lowering the Appellant in and out of the tub.

The Appellant's father testified the Appellant benefits from being submerged in the tub for her bathing. She sleeps better, her movements are better, and she generally has a better day at school the next day. He stated that for hygiene purposes the Appellant needs more than a sponge bath. Appellant's father said it was dangerous putting the Appellant in and out of the tub. He said the Appellant sweats a lot from sitting in her molded chair and develops a rash on her back for which she is prescribed hydrocortisone cream. Appellant's father said he tried bathing her in a chair in a shower, but when she is sprayed with water she becomes nervous and upset, she turns blue, and it nearly causes her to have a seizure. The Department analyst noted the father's testimony added details not submitted along with the PA request, which if certified by the Appellant's doctor might be sufficient to reverse the Department's denial.

This Administrative Law Judge must uphold the Department's denial of the Appellant's request. The Medicaid policy in these circumstances is clear and unambiguous. The documentation submitted along with the PA request must demonstrate medical necessity for the requested equipment, and it must show that there are no economical alternatives to the requested equipment, as Medicaid only covers Medical devices if they are the most cost-effective treatment available. The information submitted by the Appellant along with the PA request did not demonstrate medical necessity for submersion baths and that there are no economical alternatives to the requested equipment.

An administrative law judge does not act as an evaluator of newly submitted information to determine whether the requested medical equipment is medically necessary, or the most economical alternative available to meet an individual's needs. Rather the judge must review the information submitted along with the prior authorization request, and determine if the Department's denial is supported by the information submitted and a proper application of the relevant policy from the Medicaid Provider Manual.

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Based upon the preponderance of the evidence submitted in this case, the Appellant has failed to meet her burden of showing that the Department erred when it denied her request for a Clarke Aquatec bath lift with accessories, based on the information submitted with the Appellant's PA request.

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 a Clarke Aquatec bath lift with accessories.

IT IS THEREFORE ORDERED that:

The Department's decision is **AFFIRMED**.

William D Bond

William D. Bond
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

WDB/db

cc: [REDACTED]

***** NOTICE *****

The State Office of Administrative Hearings and Rules 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 State Office of Administrative Hearings and Rules 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.