

**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. 2014-35392 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.*, upon Appellant's request for an in-person hearing.

After due notice, an in-person hearing was held on ██████████ at the ██████████ Department of Human Services in ██████████, Michigan. The Department of Community Health's represented appeared by conference telephone.

Appellant was present at the administrative hearing but is not capable of testifying. Appellant's guardian, ██████████, represented Appellant. Appellant's caregiver was present but did not testify.

██████████ appeared by conference telephone. The Department's witness, Adam Schlaufman, MA Utilization Analyst also appeared by conference telephone

ISSUE

Did the Department properly deny the Appellant's prior authorization request for a Custom Fabricate W/C Cushion and Custom Fab W/C Back Cushion for Appellant's wheelchair?

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 ██████ year old male Medicaid beneficiary, born ██████ with a diagnosis of Lennox-Gestalt Seizure Disorder. Appellant has multiple seizures daily, including sudden drop seizure, tonic-clinic seizures and staring seizures. (Exhibit A.40)

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2. Appellant has had a variety of seizure medications, and combinations, and surgical interventions including a corpus colostomy but continues to have daily seizures. (Exhibit A.40)
3. Appellant submitted an Amended Letter of Medical Necessity from his physician and PT states that Appellant has low resting muscle tone, collapses into gravity and flexes to lean into any supporting surface to maintain an upright position, relies on joint hypertension and leaning on ligaments and any available surface to enhance balance and body support, with unreliable and unpredictable extensions and equilibrium. (Exhibit A.40) Appellant has a long trunk, is thin, and not able to hold his back erect by himself. (Testimony)
4. Appellant's seizures have caused him to slide down into his seat with his restraints wrapped around his neck causing skin breakdown and potential airway restriction. (Exhibit A.40-43; Testimony)
5. On ██████████ the Department received a request from Binson's Home Health Care Center for a dynamic back interface, Millers dynamic foot rest Springs, Millers dynamic headrest mount, custom solid seat, custom back, and tray with hardware on behalf of Appellant. (Exhibit A.2)
6. On ██████████ The Department denied Appellant's request, stating that components requested due to Appellant's behaviors are not covered, and, that medical necessity for custom seating is not substantiated. (Exhibit A.33).
7. On ██████████ Appellant filed a hearing request.
8. At an in-person administrative hearing in Wayne County Department of Human Services, ██████████, ██████████, Michigan, Appellant, Appellant's representative and the Administrative Law Judge (ALJ) personally appeared. The Department representatives appeared by conference telephone. At the administrative hearing, the Department submitted a Notice of Amended Authorization dated ██████████, which Appellant had not previously received or reviewed. (Exhibit B.2) The Amended Authorization approved all of the requested Invacare Solara tilt wheelchair and accessories, except for the custom seat and custom back cushion, on the grounds that "medical necessity for custom seating is not substantiated." (Exhibit B.2)
9. The parties stipulated at the administrative hearing that the only issue for review is the denial of the custom seat and custom back cushion, E2609 and E2617. (Exhibit B.2, Testimony)

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 Medicaid Provider Manual provides, in pertinent part, as follows:

SECTION 1 – PROGRAM OVERVIEW

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

Providers of Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) must be enrolled as a Medicare provider effective September 30, 2009. (Refer to the General Information for Providers chapter for additional information.)

The primary objective of the Medicaid Program is to ensure that medically necessary services are made available to those who would not otherwise have the financial resources to purchase them.

The primary objective of the Children's Special Health Care Services (CSHCS) Program is to ensure that CSHCS beneficiaries receive medically necessary services that relate to the CSHCS qualifying diagnosis.

This chapter describes policy coverage for the Medicaid Fee-for-Service (FFS) population and the CSHCS population. Throughout the chapter, use of the terms Medicaid and MDCH includes both the Medicaid and CSHCS Programs unless otherwise noted.

Medicaid covers the least costly alternative that meets the beneficiary's medical need for medical supplies, durable medical equipment or orthotics/prosthetics.

* * *

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.

* * *

1.3 PLACE OF SERVICE

Medicaid covers medical supplies, durable medical equipment (DME), orthotics, and prosthetics for use in the beneficiary's place of residence except for skilled nursing or nursing facilities.

* * *

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.

* * * *

1.10 NONCOVERED ITEMS [CHANGE MADE 4/1/13]

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

Custom seating for secondary and/or transport chairs* * * *

- Power tilt-in-space or reclining wheelchairs for a long-term

- Items used solely for the purpose of restraining the beneficiary for behavioral or other reasons care resident because there is limited staffing.

* * * *

2.48 WHEELCHAIRS, PEDIATRIC MOBILITY AND POSITIONING MEDICAL DEVICES, AND SEATING SYSTEMS

* * * *

2.48.B. STANDARDS OF COVERAGE [RE-NUMBERED 7/1/13]

Custom-Fabricated Seating Systems

May be covered when required to assure safe mobility and functional positioning when the beneficiary has postural deformities, contractions, tonal abnormalities, functional impairments, muscle weakness, pressure points, and seating balance difficulties. May be covered if all of the following are met:

- Two or more of the above clinical indications are documented in the medical record and in the mobility assessment, and the severity of the clinical indications cannot be accommodated by a standard seating system.
- Must accommodate growth and adjustments a minimum of 3" in depth and 2" in width.
- Must document the reason for the selection when the system cannot be used in more than one mobility device.
- Is the most economical alternative available to meet the beneficiary's mobility needs.

For CSHCS pediatric beneficiaries, a written order from an appropriate board-certified pediatric subspecialist or an Office of Medical Affairs (OMA)-approved physician is required. MDCH also reserves the right to require a written order from an appropriate board-certified pediatric subspecialist for Medicaid beneficiaries.

Manual Tilt-in-Space or Recline Function in Community Residential Setting

Manual tilt-in-space function allows the seat and back of the wheelchair to move as a unit, such that the angle of the back to the floor changes from approximately 90 degrees to 45 degrees or less. This change in position does not affect the hip-to-knee angle. The seat may be tilted manually.

The **tilt-in-space** function for a wheelchair may be covered if **one or more** of the following apply:

- History of skin breakdown or current indication of imminent skin breakdown that cannot be controlled (or has not in the past) by less costly modalities (such as pressure relief cushions or manual pressure relief techniques).
- Excessive extensor or flexor muscle tone that is exacerbated by change in hip angle and makes positioning in any upright chair ineffective. State reason why changing angles of position is medically necessary.
- Very low muscle tone that cannot maintain upright positioning against gravity, causing spinal anomalies.
- Beneficiary has knee contractures and a custom-molded seating system. Coverage of both a **manual tilt-in-space and recline function** for a wheelchair requires medical need (such as high probability of the development of hip contractures) if only a tilt-in-space without recline is used. Also, there is a medical contraindication to using recline-only without the tilt-in-space function.

Power Tilt-in-Space or Recline Function in Both Community Residential and Institutional Residential Settings

Power tilt-in-space or recline function may be covered if **all** of the following exist:

- An existing medical condition results in the inability to reposition self without the use of a power tilt or recline mechanism.

- The frequency of repositioning is clinically indicated and is an integral part of the nursing facility plan of care.
- Beneficiary requires assistance to use a manual tilt-in-space or recline system, and there are regular periods of time that the beneficiary is without assistance.
- Beneficiary requires assistance to use a manual tilt-in-space or recline system, and is able to independently care for himself when provided a power tilt-in-space or recline modification.

For CSHCS pediatric beneficiaries, a written order from an appropriate board-certified pediatric subspecialist or an Office of Medical Affairs (OMA)-approved physician is required. MDCH also reserves the right to require a written order from an appropriate board-certified pediatric subspecialist for Medicaid beneficiaries.

**2.48.C. PRIOR AUTHORIZATION FOR PURCHASE,
RENTALS, REPAIRS, AND/OR REPLACEMENT OF**

**MOBILITY DEVICES [RE-NUMBERED 7/1/13; CHANGE
MADE 10/1/13]**

* * * *

**Prior Authorization Process for Beneficiaries in the
Institutional Residential Setting**

Prior authorization is required for Medicaid coverage and separate reimbursement for medically necessary power-operated vehicles and power or manual wheelchairs with custom-fabricated seating systems. The request for a resident assessment must be initiated by the treating physician with the stated medical reason for the referral.

Facility clinicians who are responsible for the overall nursing plan of care and treatment of the resident will prepare and submit prior authorization requests and medical documentation directly to the MDCH Program Review Division.

Refer to the Nursing Facility Coverages chapter for additional information regarding prior authorization of

wheelchairs and custom-fabricated seating systems for beneficiaries in an institutional residential setting.

(Refer to the Prior Authorization Form subsection and the Evaluation and Medical Justification for Complex Seating Systems and Mobility Devices Form subsection of this chapter for additional information.)

*MDCH Medicaid Provider Manual
Medical Supplier Section
July 1, 2013, pp 1, 3-5, 17-18, 88, 91
Emphasis added.*

10.8 DURABLE MEDICAL EQUIPMENT

10.8.A. STANDARD EQUIPMENT

* * * *

In addition, nursing services include positioning and body alignment and preventive skin care. The nursing facility is responsible for proper pressure relief and positioning. The use of medical equipment as a substitute for responsible patient care is inappropriate and not covered.

* * * *

10.8.B.1. MEDICAL NECESSITY

A physician's order by itself is not sufficient documentation of medical necessity, even when it is signed by the treating physician. Clinical documentation from the medical record must support the medical necessity for the request and substantiate the physician's order. In addition, Medicaid coverage is not based solely on a physician's order; the request must also meet the standards of coverage published by MDCH. (Refer to the Medical Necessity subsection of the Medical Supplier chapter for a complete description of medical necessity requirements.)

The nursing facility's responsibility for each resident's health care needs and other services, including patient care, transfers, safety, skin care, equipment, medical supplies,

etc., are described in federal regulations and state licensure requirements. The use of medical equipment as a substitute for responsible patient care is inappropriate and not covered.

Refer to the Medical Supplier chapter for additional information regarding Medicaid definitions and standards of coverage for mobility and custom-fabricated seating systems.

10.8.B.2. NONCOVERED

Power wheelchairs and custom-fabricated seating systems, including add-on components, are not covered outside the facility per diem rate when:

- There is an appropriate economic alternative.
- The devices are not related to, or an integral part of, the nursing facility daily plan of care.
- The accessory or add-on component is deemed to be standard under the definition of a standard manual wheelchair.
- The wheelchair is used as a restraint or for the purpose of treating aberrant behaviors.
- The need for the wheelchair is a substitute for appropriate clinical nursing services, as defined in federal regulations.
- The wheelchair is inappropriate for the beneficiary's cognitive level or behavioral level.
 - The beneficiary is unable to safely operate the wheelchair.
- A standard wheelchair meets functional need or outcome as defined in the plan of care.
- The device is ordered for nonstandard use (e.g., therapeutic modality or exercise).
- The device is ordered to increase sitting tolerance that exceeds acceptable medical guidelines for skin care and pressure.

In the present case, the Department first denied a number of items and a number of requests in the original PA for the wheel chair and accessories. However, subsequent to initial PA request and denial, just prior to the administrative hearing, the Department approved all requests except for the custom back and seat for Appellant's wheel chair on the grounds that Appellant did not show that he met the medical necessity criteria. Appellant did not see the approval letter until the administrative hearing. After review, the parties stipulated that the only issue(s) left for review at this hearing is the custom seat and custom back cushions.

The Medicaid Utilization Analyst testified that the PA request that was initially denied was on the grounds that the Department believed that Appellant's severe seizures were classified as "behavioral" under Medicaid Policy. However, upon the receipt of further documentation, the Department determined that it Appellant's seizures were not "behavioral" and that the requests met the criteria except for the back and seat cushions.

The Department argues that custom cushions did not meet the criteria in the Medical Supplier Chapter, Custom-Fabricated Seating Systems (2.48.B). Specifically, the Department indicated that the medical evidence does not show that 2 or more of the following criteria is met: necessary to assure safe mobility and functional positioning when the beneficiary has postural deformities, contractions, tonal abnormalities, functional impairments, muscle weakness, pressure points, seating balance difficulties. (Section 2.48.B) The Department also argues that Appellant can sit independently at times.

Appellant argues that while Appellant may, on occasion, sit upright at times, this is somewhat of a reflex and happens unpredictably. More importantly, during seizures, which occur multiple times daily, Appellant's body thrusts forward, is very rigid, and slips down the restrains in the chair due to his being very thin. This has caused skin irritation and redness/burning, and can potential affect a safe airflow. Appellant argues that the cushions are necessary for safe mobility and functioning.

This administrative law judge (ALJ) was present in person at the administrative hearing and observed Appellant. As noted on the record, his current wheel chair is in extraordinary disrepair, has numerous rips, with stuffing sticking out of the chair. This ALJ also observed Appellant having a seizure(s) during the hearing. Appellant's guardian's testimony and the evidence contained in the amended medical necessity letter support the observations and testimony to support a determination that Appellant meets the criteria laid out in the Medical Provider Manual, Medical Supplier chapter, Section 2.48.B (Exhibit A.84) as well as the medical necessity criteria. While Appellant may be

able to sit independently at times, this is unpredictable and not the norm. His many and violent seizures cause his body to thrust in a manner that a provider cannot necessarily stop sufficiently for his medical and physical safety. This ALJ finds that Appellant meets the criteria as specified in Section 2.48.B:

May be covered when required to assure safe mobility and functional positioning when the beneficiary has postural deformities, contractions, tonal abnormalities, functional impairments, muscle weakness, pressure points, and seating balance difficulties. May be covered if all of the following are met:

The evidence supports that Appellant meets the Medicaid standards of coverage and documentation requirements to establish medical necessity for the requested custom seat and back.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department Appellant meets the criteria for a custom cushion and custom back cushion, E2609 and E2617, for his wheel chair, and that the Department improperly denied the Appellant's request.

IT IS THEREFORE ORDERED that:

The Department's decision is REVERSED.

Janice G Spodarek
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

RJM/

cc:

Date Signed:

Date Mailed:

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***** 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.