

**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:**

**Docket No.** 2014-35812 QHP

██████████

██████████

██████████

Appellant.

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**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 ██████████, Appellant's mother, appeared and testified on Appellant's behalf. ██████████, speech pathologist; ██████████, special education teacher/case manager; and ██████████, care professional; also testified as witnesses for Appellant.

██████████, Director of Customer Services and Grievances, represented ██████████, the Respondent Medicaid Health Plan ("MHP"). ██████████, Director of Health Services, and ██████████, Customer Services Supervisor, also testified as witnesses for the MHP

**ISSUE**

Did the MHP properly deny Appellant's request for a speech generating device (SGD)?

**FINDINGS OF FACT**

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. On or about ██████████, the MHP received a request made on behalf of Appellant for a ProSlate 8 Dedicated Speech Generating Device, along with documentation supporting that request. (Respondent's Exhibit A, pages 5-20).
2. That supporting documentation provided that Appellant was ██████ years-old; had been diagnosed with a cognitive impairment and severe expressive language disorder secondary to that impairment; was unable to communicate successfully to get his needs, wants, and desires met; had not benefitted from traditional speech therapy; and had a good medical prognosis regarding use of a SGD. (Respondent's Exhibit A, pages 8-16).

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3. On [REDACTED], the MHP sent Appellant written notice that the request was being denied. (Respondent's Exhibit A, pages 25-27).
4. Regarding the basis for the denial, that notice provided:

Based on the information supplied, the request has been denied. The reasons for the denial are as follows:

Documentation does not indicate that the SGD will:

- replace a missing body part (i.e. larynx), or
- be used to restore communication skills to the previous functioning level

The decision is based on benefit coverage, evidence-based medical guidelines, scientific facts, FDA regulations, medical necessity, and/or other criterion, as supported below:

The Medicaid Provider Manual, Section 2.39 Speech Generating Devices, states SGDs, may be covered under the following conditions for beneficiaries who demonstrate the comprehension and physical skills necessary to communicate using the requested device.

- Prosthetic Function – To replace a missing body part, to prevent or correct a physical deformity or malfunction, or to support a weak or deformed portion of the body.
- Rehabilitative Function – To restore communication skills to the previous functional level by providing a tool to the beneficiary.

*Respondent's Exhibit A, page 25*

5. That notice of denial also informed Appellant of his right to file an appeal with the MHP or to request a fair hearing from the State of Michigan. (Respondent's Exhibit A, page 26).

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6. On [REDACTED], an appeal was submitted to the MHP on Appellant's behalf, along with additional documentation. (Respondent's Exhibit A, pages 30-39).
7. That additional documentation indicated that Appellant has been diagnosed with cognitive impairment and severe expressive language disorder secondary to that impairment; has never been able to communicate successfully; has not benefitted from traditional therapy; and needs the device to communicate effectively. (Respondent's Exhibit A, pages 30-39).
8. On [REDACTED], the MHP sent Appellant written notice that the appeal of the denial of the request for a SGD had been reviewed and the request was again being denied. (Respondent's Exhibit A, pages 40-42).
9. Regarding the basis for the denial, that notice provided:

Based on the information supplied and available at the time of review, the request has been denied. The reasons for the denial are as follows:

No additional information was submitted to change the denial decision.

Documentation does not indicate that the SGD will:

- replace a missing body part (i.e. larynx), or
- be used to restore communication skills to the previous functioning level

The Medicaid Provider Manual, Section 2.39 Speech Generating Devices, states SGDs, may be covered under the following conditions for beneficiaries who demonstrate the comprehension and physical skills necessary to communicate using the requested device.

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functional level by providing a tool to the beneficiary.

The decision is based on evidence-based medical guidelines, scientific facts, FDA regulations, and/or benefit review.

*Respondent's Exhibit A, page 40*

10. The denial notice also informed Appellant of his right to request a Medicaid Fair Hearing within █████ days of the date of the notice. (Respondent's Exhibit A, page 41).
11. On ██████████, the Michigan Administrative Hearing System (MAHS) received the request for hearing filed on behalf of Appellant in this matter. (Petitioner's Exhibit 1, page 1).

**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.

In 1997, 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 MHPs and Appellant and Appellant's family are enrolled as members in it.

The Respondent is one of those MHPs and, as provided in the Medicaid Provider Manual (MPM), is responsible for providing covered services pursuant to its contract with the Department and the provisions of the MPM:

The Michigan Department of Community Health (MDCH) contracts with Medicaid Health Plans (MHPs), selected through a competitive bid process, to provide services to Medicaid beneficiaries. The selection process is described in a Request for Proposal (RFP) released by the Office of Purchasing,

Michigan Department of Technology, Management & Budget. The MHP contract, referred to in this chapter as the Contract, specifies the beneficiaries to be served, scope of the benefits, and contract provisions

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with which the MHP must comply. Nothing in this chapter should be construed as requiring MHPs to cover services that are not included in the Contract. A copy of the MHP contract is available on the MDCH website. (Refer to the Directory Appendix for website information.)

MHPs must operate consistently with all applicable published Medicaid coverage and limitation policies. (Refer to the General Information for Providers and the Beneficiary Eligibility chapters of this manual for additional information.) Although MHPs must provide the full range of covered services listed below, MHPs may also choose to provide services over and above those specified. MHPs are allowed to develop prior authorization requirements and utilization management and review criteria that differ from Medicaid requirements. The following subsections describe covered services, excluded services, and prohibited services as set forth in the Contract.

*MPM, January 1, 2014 version  
Medicaid Health Plans Chapter, page 1  
(emphasis added)*

Moreover, with respect to the SGD at issue in this case, the MPM provides:

**2.39 SPEECH GENERATING DEVICES**

<b>Definition</b>	A Speech Generating Device (SGD) is defined as any electric or nonelectric aid or device that replaces or enhances lost communication skills. The device must be an integral part of a treatment plan for a person with a severe communication disability who is otherwise unable to communicate basic functional needs.
<b>Standards of Coverage</b>	SGDs may be covered under the following conditions for beneficiaries who demonstrate the comprehension and physical skills

	<p>necessary to communicate using the requested device.</p> <ul style="list-style-type: none"><li>▪ <b>Prosthetic Function</b> - To replace a missing body part, to prevent or correct physical deformity or malfunction, or to support a weak or deformed portion of the body.</li><li>▪ <b>Rehabilitative Function</b> - To restore communication skills to the previous functional level by providing a tool to the beneficiary.</li></ul> <p>A speech-language pathologist, in conjunction with other disciplines such as occupational therapists, physical therapists, psychologists, and seating specialists as needed, must provide a thorough and systematic evaluation of the beneficiary's receptive and expressive communication abilities.</p> <p>Ancillary professionals must possess proper credentials (certification, license and registration, etc., as appropriate).</p> <p>SGD vendors (manufacturers, distributors) may not submit assessment information or justification for any requested SGD.</p>
	<p><b>Frequency</b> - The program will purchase new equipment only. Only one SGD will be purchased within a three-year period for beneficiaries under age 21. Only one SGD will be purchased within five years for beneficiaries age 21 and older.</p> <p>Exceptions may be considered in situations where there has been a recent and significant change in the beneficiary's medical or</p>

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	functional status relative to the beneficiary's communication skills.
	<b>Warranty</b> - The warranty period begins at the point when the device is in the beneficiary's home and the beneficiary has received adequate training to use his system for functional communication.
	<b>Repairs</b> - Repairs for speech generating devices (SGD) are covered after the warranty expires for no more than one SGD per beneficiary. Additionally, repair of an SGD not purchased by MDCH is covered only if the SGD is determined to be necessary to meet basic functional communication needs in accordance with the criteria for SGD coverage.
<b>Documentation</b>	<p>Documentation must be within 90 days and include:</p> <ul style="list-style-type: none"> <li>▪ Medical diagnosis. (The medical diagnosis must directly relate to the beneficiary's communication deficit.)</li> <li>▪ Specifications for the SGD. (Refer to the Outpatient Therapy Chapter)</li> <li>▪ Necessary therapy and training to allow the beneficiary to meet functional needs.</li> </ul> <p>All SGD evaluation documentation must be submitted following the established criteria stated within the Evaluations and Follow-up for Speech Generating Devices subsection of the Outpatient Therapy Chapter.</p> <p>Documentation for modifications must indicate the changes in the</p>

	<p>beneficiary's functional or medical status that necessitate the need for modifications in the system or parts.</p> <p>When a current SGD needs replacement and the replacement is identical to the SGD previously purchased by MDCH, the documentation required is:</p> <ul style="list-style-type: none"> <li>▪ Clinical confirmation of continued suitability by a speech-language pathologist.</li> <li>▪ Clinical confirmation by a speech-language pathologist and occupational or physical therapist of the beneficiary's functional ability to use the SGD.</li> <li>▪ Cost of the repair and the cost of replacement.</li> </ul> <p>When a current SGD needs replacement and the replacement is <b>different</b> than the SGD previously purchased by the program, a new SGD Evaluation must be conducted. Additional documentation required is a statement that indicates how the current system no longer meets the beneficiary's functional communication needs. A current reevaluation is required for any device that is not identical to the device being replaced.</p> <p>For replacements due to loss or damage, indicate the following additional documentation:</p> <ul style="list-style-type: none"> <li>▪ The cause of the loss or damage; and</li> <li>▪ The plan to prevent recurrence of the loss or damage.</li> </ul>
<p><b>PA Requirements</b></p>	<p>The speech-language pathologist performs the functional</p>

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	<p>communication assessment and SGD evaluation and initiates the PA request with a medical supplier that has a specialty enrollment with the MDCH to provide SGDs. To improve beneficiary access to low-end devices, a medical supplier without a SGD specialty enrollment with MDCH may provide SGDs with eight minutes or less of speech capability, basic SGD accessories such as switches, buttons, etc., or SGD wheelchair mounting systems. A SGD vendor must enroll through the MDCH CHAMPS PE on-line system as a medical supplier with a subspecialty of Speech Generating Devices in order to provide the full range of SGDs. (Refer to the Directory Appendix for contact information.)</p> <p>PA is required for all SGD systems. Required documentation must accompany the Special Services Prior Approval—Request/Authorization (MSA-1653-B) when requesting authorization for all original and replacement/upgrade SGD requests.</p> <p>A copy of the physician prescription must be submitted with the request for an SGD. The prescription must be based on the evaluation of an individual's communication abilities and medical needs made by a speech-language pathologist and other evaluation team members (as appropriate).</p>
	<p><b>Modifications</b> - All modifications and upgrades for SGDs require PA. Indicate the procedure code</p>

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	<p>that defines the modifications, requesting PA for modifications and upgrades.</p>
	<p><b>Repairs</b> - For a repair, report HCPCS code K0739 (for the labor charge) and HCPCS code E1399 (for the replacement part). PA is required for all repairs. If repair charges exceed \$150, a speech-language pathologist, occupational therapist, or physical therapist must conduct an evaluation. A statement must be included in the evaluation indicating whether the current SGD continues to meet the beneficiary's functional needs. If the beneficiary's needs are being met with the current system, PA may be granted.</p> <p>Each repair must consist of a thorough assessment of the general working condition of the entire system so that frequent repairs may be avoided. If additional repairs to the system are needed, PA for those additional services must be obtained.</p> <p>In some cases, it may be more costly to repair the SGD than to replace it. When requesting PA for a repair, provide the cost of the repair and the cost of the replacement so that determination can be made by MDCH whether to repair or replace the device.</p>
	<p><b>Replacements</b> - All replacements (identical, upgrades, downgrades) of an SGD require PA.</p>
<p><b>Payment Rules</b></p>	<p><b>Purchase</b> - MDCH will purchase new equipment only. The serial number of the device purchased</p>

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	<p>must be maintained on file by the vendor for audit purposes.</p> <p>Shipping and handling fees relating to the SGD equipment are not separately reimbursed.</p> <p>Reimbursement includes the charges for the SGD and all approved components.</p> <p>The provider's charge for an SGD must be based on the usual and customary charge. Reimbursement will be the lesser of the provider's charge and/or the Medicaid fee screen.</p>
	<p><b>Rental</b> - MDCH will rent equipment or devices when the purchase price of the device, including the component parts, exceeds \$9,000. Equipment will not be rented for a period of less than 30 days and may be rented for a maximum period of 90 days. The monthly rental reimbursement rate will be 1/10 of the maximum purchase reimbursement. The amount reimbursed for rental will be deducted from the total purchase price.</p>

*MPM, January 1, 2014 version  
Medical Supplier Chapter, pages 70-73*

Relying on the above policy, the MHP determined that Appellant did not meet the criteria for a SGD in this case because it would not be serving either the prosthetic function or the rehabilitative function required by policy. As found by the MHP, Appellant's current speech problems are not related to any physical issues and the requested device would only be aiding Appellant in developing new communication skills for the first time.

Appellant bears the burden of proving by a preponderance of the evidence that the MHP erred in denying his request for a SGD. Moreover, the undersigned Administrative Law Judge's jurisdiction is limited to reviewing the MHP's decision in light of the information available at the time it made that decision.

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Here, Appellant's representative and witnesses first testified and argued that the SGD is medically necessary as all traditional speech therapy and techniques have been unsuccessful in the past while Appellant's prognosis with the use of a SGD is good. However, while it is undisputed that the SGD would benefit Appellant, that argument does not address the specific criteria identified in the above policy or demonstrate how Appellant meets that criteria.

Appellant's speech pathologist also testified and argued that Appellant's speech problems are related to a physical deformity or malfunction and that the submitted documentation does not reflect such a physical issue because the form used only allowed for one diagnosis. However, as discussed above, the undersigned Administrative Law Judge's jurisdiction is limited to reviewing the MHP's decision in light of the information available at the time it made that decision and, in this case, the available information only identified a cognitive impairment and a severe expressive language disorder secondary to that impairment. There is no suggestion of any physical issues or that the SGD device would be replacing a missing body part, preventing or correcting a physical deformity or malfunction, or supporting a weak or deformed portion of the body.

Moreover, the undersigned Administrative Law Judge finds the speech pathologist's claim that there was no opportunity to identify other physical issues to be completely unpersuasive as the prior authorization requests are not limited to any specific forms and the pathologist twice submitted a number of documents, including an addendum to the initial request after that request was denied and the reason for the denial identified. Nowhere in that addendum or any other documents is a missing body part, physical deformity or malfunction, or a weak or deformed portion of the body specifically identified.

Appellant's speech pathologist further argued that the SGD must be provided as an Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) service. However, there is no showing that the request in this case was related to any EPSDT screening, requested as such a service, or that the EPSDT program has any relation to this case.

The above policy is clear and, in light of the criteria identified in that policy and the information submitted in this case, Appellant has failed to meet his burden of proving that the MHP erred in denying the request for a SGD. Accordingly, that denial must be affirmed.


**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the MHP properly denied Appellant's request for a speech generating device.

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**IT IS THEREFORE ORDERED** that:

The Medicaid Health Plan's decision is **AFFIRMED**.



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

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

SK/db

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 60 days of the mailing date of the Decision and Order or, if a timely request for rehearing was made, within 60 days of the mailing date of the rehearing decision.