

**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. 15-000945 MHP

██████████

██████████

██████████

Appellant.

_____ /

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37, and upon a request for a hearing filed on behalf of the minor Appellant ██████████.

After due notice, a telephone hearing was held on ██████████. Appellant did not appear at the hearing. Appellant's mother ██████████, appeared and testified on Appellant's behalf. ██████████ Manager Medicaid Products, appeared on behalf of the Medicaid Health Plan, ██████████ or MPH).

Respondent's Exhibit A pages 1-37 are admitted as evidence without objection.

ISSUE

Did Priority Health properly deny Appellant's request for an enclosed bed system?

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 Medicaid beneficiary, born ██████ who is diagnosed with cerebral palsy and tightened heel cords.
2. Respondent ██████████ is a Qualified Health Plan contracted with the State of Michigan Comprehensive Care Program.
3. Appellant was an enrolled member with ██████████ at the time of request for services and continues to be enrolled.

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4. The [REDACTED] h Member Handbook and Certificate of Coverage were sent at the time of enrollment.
5. The Member Handbook outlines coverage limitations, prior authorization requirements, limitations and exclusions, and the pharmacy guidelines.
6. On [REDACTED] from [REDACTED], submitted a Prior Authorization form to [REDACTED] requesting approval for Nighttime AFOs, (bilateral nighttime dynamic stretching Roosterboots).
7. On [REDACTED] issued an initial denial of the Appellant's prior authorization request stating that the requested Nighttime AFOs are considered experimental pursuant to [REDACTED] Medical Policy No. 91117-R8 Experimental/Investigational/Unproven Care, Benefit Exceptions which states: "any drug, device, treatment or procedure that is experimental, investigational or unproven is not a covered benefit."
8. On [REDACTED], [REDACTED] sent Appellant Written Notice of the Denial.
9. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received a request for hearing filed on behalf of Appellant stating that Appellant had been denied Nighttime AFO's.
10. On [REDACTED] a request for Level 1 Appeal was submitted to [REDACTED].
11. On [REDACTED], the [REDACTED] Appeal Committee met and upheld the denial for Nighttime AFOs.

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 in one of those Medicaid Health Plans and, regarding such plans, the Michigan Medicaid Provider Manual states:

SECTION 1 – GENERAL INFORMATION

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 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.**

Prosthetics and orthotics are services covered by Medicaid Health Plans (MHPs) (Section 1.1).

Experimental/Investigational drugs, procedures or equipment are services that MHPs are prohibited from covering. (Section 1.3)

*[Medicaid Provider Manual, Medicaid Health Plan (MHPs),
January 1, 2015, p. 1-3 (emphasis added)].*

The ██████████ Medical Policy No. 91117-R8, page 1 states in pertinent part:

- A. Any drug, device, treatment or procedure that is experimental, investigational or unproven is not a covered benefit. A drug, device, treatment or procedure is experimental, investigational or unproven if any of the following apply:
 5. Reliable Evidence shows that the prevailing opinion among experts regarding the drug, device, treatment or procedure is that further studies or clinical trials are necessary to determine its toxicity, safety, or efficacy as compared with a standard means of treatment or diagnosis.

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Pursuant to the above policy, ██████████ denied Appellant's request on the basis that the Night time AFOs are considered experimental by ██████████ Medical Policy No. 91117-R8 and the Journal of American Physical therapy Association article entitled "Effectiveness of Stretch for the Treatment and Prevention of Contractures in People with Neurological conditions: A Systematic Review".

Appellant bears the burden of proving by a preponderance of the evidence that ██████████ erred in denying this request based upon the information that was submitted to it in connection with the prior authorization request for the nighttime AFOs. Here, Appellant has failed to meet that burden of proof.

Appellant's mother testified that the Nighttime AFOs are needed to decrease Appellant's toe walking and to improve the stretch in her heel cords. In the past she has gone through serial casting and has benefitted from it but the night splints are less invasive. Without the nighttime AFOs, Appellant's toe walking will continue to get worse and her heel cords tighter.

In support of Appellant's request a letter from Medical Justification from ██████████ Pediatric Physical therapist states

██████████ has had serial casting in the past and benefited from it, but it is more invasive than night splinting and works best if it is followed up with night splinting. In the past ██████████ has been unable to get night splints and that is probably why her heel cords are getting tight again. ██████████ would benefit from Rooster boots dynamic night stretching splints to help improve her heel cord, in order to decrease toe walking". (Respondent's Exhibit A page 5)

The MHP witness indicated that the letter had been reviewed during the Level 1 review.

The MPH, and likewise the undersigned administrative law judge are bound by the policies set forth in the Medicaid Provider Manual. The preponderance of the evidence in this case shows that while the nighttime AFOs requested by the Appellant might certainly meet her needs, as per policy, Appellant has failed to establish by a preponderance of the evidence that the requested nighttime AFOs are not experimental. The nighttime AFOs have not been established to be medically and functionally necessary to meet Appellant's needs.

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The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that ██████████ properly denied Appellant's request for Nighttime AFOs.

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IT IS THEREFORE ORDERED that:

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



Landis Y. Lain
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Community Health

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

LYL/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.