

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**

P.O. Box 30763, Lansing, MI 48909
(517) 335-2484; Fax: (517) 373-4147

IN THE MATTER OF:

Docket No. 15-013440 PA

██████████

██████████

██████████

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.*, and upon a request for a hearing filed on Appellant's behalf.

After due notice, a telephone hearing was held on ██████████ ██████████, Appellant's mother and co-legal guardian, appeared and testified on Appellant's behalf. ██████████, Appellant's physician, also testified as a witness for Appellant. ██████████, Appeals Review Officer, represented the Department of Health and Human Services (DHHS or Department). ██████████ Medicaid Utilization Analyst, testified as a witness for the Department.

ISSUE

Did the Department properly deny Appellant's prior authorization request for an activity chair and 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. Appellant is a ██████████ year-old Medicaid beneficiary who has been diagnosed with spastic diplegic cerebral palsy. (Exhibit A, pages 7, 9).
2. Appellant's mother is her co-plenary legal guardian. (Exhibit 1, page 1).
3. On ██████████ and ██████████ the Department denied prior authorization requests for an activity chair and accessories submitted on Appellant's behalf. (Exhibit A, pages 28, 32).

██████████
Docket No. 15-013440 PA
Decision and Order

4. In ██████ denials, the notice of denial provided that the prior authorization request was denied because, per policy, activity chair and accessories are only covered for beneficiaries ages ██████ to ██████ years-old and Appellant was past those ages. (Exhibit A, pages 28, 32).
5. On or about ██████ ██████ the Department received another prior authorization request and supporting documentation submitted on Appellant's behalf and requesting a Rifton activity chair and accessories for Appellant. (Exhibit A, pages 7-18).
6. Part of the supporting documentation was a letter from Appellant's doctor in which the doctor wrote that:

To relieve [Appellant's] edema, her position needs to be changed frequently so that her legs can be kept higher than [sic] than her heart. This position cannot be achieved in her stroller. It is imperative to her health that she have this activity chair and I feel that it is a medical necessity.

Exhibit A, page 8

7. The supporting documentation also included a letter from Appellant's physical therapist and doctor in which they wrote:

Rifton Large Activity Chair

[Appellant] requires a positioning chair to compensate for her need to provide postural support and alignment while seated. This seating system, when outfitted with accessories, will provide appropriate postural support and correct positioning within [Appellant's] home. This chair has wheels so it can be moved and will fit into areas of her home. This device will allow her to set for long periods of time with her head upright and her torso supported in a mid line position.

Exhibit A, page 12

8. The ██████████ prior authorization request also identified Appellant's date of birth as ██████████ and her age at that time as ██████████ years old. (Exhibit A, pages 7-8).

9. On ██████████, the Department sent Appellant's mother written notice that the prior authorization request for a Rifton activity chair and accessories had been denied. (Exhibit 1, pages 3-4; Exhibit A, pages 5-6).
10. The denial notice noted that Appellant's prior authorization request had already been denied ██████████ before. (Exhibit 1, page 3; Exhibit A, page 5).
11. The denial notice also provided that the current request was denied because, per policy, activity chair and accessories are only covered for beneficiaries ages ██████████ to ██████████ years-old. (Exhibit 1, page 3; Exhibit A, page 5).
12. On ██████████, the Michigan Administrative Hearing System (MAHS) received the request for hearing filed this matter regarding that denial. (Exhibit 1, pages 1-2).

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 statutes, the Social Welfare Act, the Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

Medicaid covered benefits are addressed for the practitioners and beneficiaries in the Medicaid Provider Manual (MPM). With respect to general age limitations and medical necessity, the applicable version of the MPM states in part:

1.4 AGE LIMITATIONS

Coverage may be different based on the beneficiary's age. For specifics of HCPCS codes and age parameters, refer to the Coverage Conditions and Requirements Section of this chapter and the Medicaid Code and Rate Reference tool. (Refer to the Directory Appendix for website information.)

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, nurse practitioner (NP) or physician assistant (PA) order nor a certificate of medical necessity by itself provides sufficient documentation of medical necessity, even though it is signed by the treating/ordering physician, NP or PA. 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, NP or PA (for CSHCS beneficiaries, the

order must be from the pediatric subspecialist) and clinical documentation from the medical record supports the medical necessity for the request (as described above) and substantiates the practitioner'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.

MDCH does not cover the service when Medicare determines that the service is not medically necessary.

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.

MPM, April 1, 2015 version
Medical Supplier Chapter, pages 4-5

Moreover, regarding the specific request in this case, pertinent parts of the MPM state:

2.7 CHILDREN'S PRODUCTS

Definition	Children's products that may be considered for coverage include, but are not limited to, equipment that is used in the home or vehicle by children under age 21 for the purposes of positioning, safety during activities of daily living, or assisted mobility. Examples of these items include: bath supports, specialized car seats, corner chairs, dynamic standers, feeder seats, gait trainers, pediatric walkers,
-------------------	--

	positioning commodes, side lyers, standers, and toileting supports.
Standards of Coverage	<p>Children's products are covered if one or more of the following applies:</p> <ul style="list-style-type: none"> ▪ Beneficiary is unable to independently maintain a seated position. ▪ Beneficiary cannot stand and/or ambulate without the aid of an assistive device. ▪ Beneficiary has physical anomalies that require support to allow a functional position or prevent further disability.
Documentation	<p>Documentation must be less than 180 days old and include all of the following:</p> <ul style="list-style-type: none"> ▪ Diagnosis appropriate for the equipment requested. ▪ Any adaptive or assistive devices currently used in the home. ▪ Reason economic alternatives cannot be used, if applicable. ▪ Statement of functional need from an appropriate pediatric subspecialist, occupational or physical therapist.
PA Requirements	PA is required for all requests.

Payment Rules	All children's products are considered purchase only items.
----------------------	---

* * *

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

2.48.A. DEFINITIONS

Wheelchair	A wheelchair has special construction consisting of a frame and wheels with many different options and includes, but is not limited to, standard, light-weight, high-strength, powered, etc.
Pediatric Mobility Product	Pediatric mobility products are pediatric-sized mobility and positioning medical devices (as defined by PDAC) that have a special light-weight construction consisting of a frame and wheels/base with many different options. Pediatric mobility devices include pediatric wheelchairs, transport chairs, hi/low chairs with outdoor/indoor bases, and standing systems designed specifically for children with special needs. These products must meet the definition of Durable Medical Equipment (DME) (refer to the Program Overview section of this chapter) and are not available as a commercial product or for which a commercial product can be used as an economic alternative.

Docket No. 15-013440 PA
Decision and Order

<p>Licensed Medical Professional</p>	<p>A licensed medical professional is defined as an occupational or physical therapist or a rehabilitation RN who has at least two years' experience in rehabilitation seating and is not an employee of the medical supplier.</p> <p>Medicaid policy requires that assessments must be performed by a licensed medical professional. A physical therapy assistant (PTA) or a licensed occupational therapy assistant (OTA) may not perform any part of the assessment or evaluation and may not complete or sign the MSA-1656.</p>
<p>Pediatric Subspecialist</p>	<p>A pediatric subspecialist is a physician who is board-certified in a pediatric subspecialty (such as a physiatrist, neurologist, or orthopedist). A pediatrician is not considered a pediatric subspecialist relative to this policy.</p>
<p>Institutional Residential Setting</p>	<p>An institutional residential setting refers to a nursing facility, hospital long-term care unit, or county medical care facility.</p>
<p>Community Residential Setting</p>	<p>A community residential setting is defined as a non-institutional setting in the community, i.e., beneficiary's own home, Adult Foster Care (AFC), Assisted Living or Group Home.</p>

2.48.B. STANDARDS OF COVERAGE

Manual Wheelchair in Community Residential Setting	<p>May be covered if all of the following are met:</p> <ul style="list-style-type: none">▪ Has a diagnosis/medical condition that indicates a lack of functional ambulatory status and ambulates less than 150 feet within one minute with or without an assistive medical device.▪ Must be able to regularly use the wheelchair throughout the day.▪ Must be able to be positioned in the chair safely and without aggravating any medical condition or causing injury.▪ Purchase of a wheelchair is required for long-term use (greater than 10 months).▪ Must be able to use the wheelchair in the home environment (e.g., wheelchair must be able to fit through doorways and cross thresholds)▪ Must identify other economic alternatives considered.▪ Must have a method to propel wheelchair, which may include:
---	---

	<ul style="list-style-type: none">➤ Ability to self-propel for at least 60 feet over hard, smooth, or carpeted surfaces.➤ The beneficiary has a willing and able caregiver to push the chair if needed. <p>In addition:</p> <p>A standard hemi-wheelchair may be covered when a lower seat to the floor is required.</p> <p>A standard light-weight wheelchair may be covered when the beneficiary is unable to propel a standard wheelchair due to decreased upper extremity strength or secondary to a medical condition that affects endurance.</p> <p>A heavy-duty standard wheelchair may be covered if the beneficiary's weight is more than 250 pounds but does not exceed 300 pounds. (Include patient's weight in the beneficiary's file.)</p> <p>An extra heavy-duty standard wheelchair is covered if the beneficiary's weight exceeds 300 pounds. (Include patient's weight in the beneficiary's file.)</p> <p>A high-strength light-weight or ultra-light standard wheelchair may be covered when required for a specific functional need.</p>
--	---

	<p>A back-up or secondary standard manual wheelchair may be considered when:</p> <ul style="list-style-type: none"> ▪ The beneficiary is primarily a power wheelchair user but needs a manual wheelchair to have access to the community or independent living. ▪ The beneficiary's medical condition requires a power wheelchair that cannot accommodate public transportation and, therefore, requires another transport device.
--	---

* * *

<p>Pediatric Mobility Devices and Wheelchairs</p>	<p>May be covered if all of the following are met for each type of device. For CSHCS beneficiaries, a medical referral 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 medical referral from an appropriate board-certified pediatric subspecialist for Medicaid beneficiaries.</p> <p>For manual pediatric wheelchairs:</p> <ul style="list-style-type: none"> ▪ Has a diagnosis/medical condition that indicates a lack of functional ambulatory status with or without an assistive
--	---

	<p>medical device or has a willing and able caregiver to push the chair and the wheelchair is required in a community residential setting.</p> <ul style="list-style-type: none">▪ Is required for long-term use (greater than 10 months).▪ Must accommodate growth and adjustments for seating systems a minimum of 3" in depth and 2" in width.▪ Is designed to be transportable.▪ Is the most economic alternative available to meet the beneficiary's mobility needs. <p>For power wheelchairs:</p> <ul style="list-style-type: none">▪ Lacks ability to propel a manual wheelchair, or has a medical condition that would be compromised by propelling a manual wheelchair, for at least 60 feet over hard, smooth, or carpeted surfaces (this includes the need to rest at intervals).▪ Is able to safely control the wheelchair through doorways and over thresholds up to 1½".
--	---

	<ul style="list-style-type: none">▪ Has a cognitive, functional level that is adequate for power wheelchair mobility.▪ Has visual acuity that permits safe operation of a power mobility device.▪ Must accommodate growth and adjustments for custom-fabricated seating systems a minimum of 3" in depth and 2" in width.▪ For a three-wheeled power mobility device, has sufficient trunk control and balance. <p>For transport mobility medical devices (e.g., strollers):</p> <ul style="list-style-type: none">▪ Is over three years of age or has a medical condition that cannot be accommodated by commercial products.▪ Will be the primary mobility device due to inability to self-propel a manual wheelchair or operate a power wheelchair.▪ Is required as a transport device when the primary wheelchair cannot be designed to be transportable.
--	---

	<ul style="list-style-type: none">▪ Must accommodate growth and adjustments for seating systems a minimum of 3" in depth and 2" in width.▪ Is the most economic alternative available to meet the beneficiary's mobility needs.▪ Is required for use in the community residential setting. <p>For pediatric standing systems with or without wheels:</p> <ul style="list-style-type: none">▪ Is able to utilize the product without being compromised medically or functionally.▪ Has a plan of care that documents how the standing system will be used in the community residential setting.▪ Documentation addresses economic alternatives, including dynamic vs. non-dynamic factors.▪ Other economic alternatives have been ineffective.▪ Must accommodate growth and adjustments for seating systems a minimum of 3" in depth and 2" in width.
--	---

	<p>For CSHCS beneficiaries, a medical referral 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 medical referral from an appropriate board-certified pediatric subspecialist for Medicaid beneficiaries.</p> <p>For pediatric hi/low chairs:</p> <ul style="list-style-type: none">▪ Positioning cannot be accommodated by use of other mobility devices or commercial products.▪ Is required for independent transfers.▪ All mobility products with interchangeable bases and seating systems have been ruled out as economic alternatives.▪ Must accommodate growth and adjustments for seating systems a minimum of 3" in depth and 2" in width.
--	--

* * *

<p>Manual Tilt-in-Space or Recline Function in Community Residential Setting</p>	<p>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.</p>
	<p>The tilt-in-space function for a wheelchair may be covered if one or more of the following apply:</p> <ul style="list-style-type: none"> ▪ 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.

	<ul style="list-style-type: none">▪ Beneficiary has knee contractures and a custom-molded seating system. <p>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.</p>
--	---

*MPM, April 1, 2015 version
Medical Supplier Chapter, pages 30, 87-90, 92*

Here, the Department sent Appellant written notice that the prior authorization request for an activity chair and accessories was denied on the basis that, per the above policies, an activity chair and accessories are only covered for beneficiaries ages ██████ to ██████ years-old and Appellant was past that age. In support of that decision, the Department's witness also discussed the above policies and how, under those policies, activity chairs are considered children's products and are therefore limited to beneficiaries under ██████ years-old. She also further identified Appellant's age, ██████ years-old, and explained that Appellant was therefore outside of the age limitations for the requested item. The Department's witness also testified that Appellant may be covered for a positioning wheelchair that could meet her identified needs.

In response, Appellant's mother testified that their house is so small that a positioning wheelchair would not fit into Appellant's home. She also testified that Appellant needs an activity chair and that, whatever her actual age is, Appellant is more like a child than an adult.

Appellant's doctor also testified that Appellant has a medical need for an activity chair or wheelchair with a tilt-in-space function, and that it is her understanding that there is no space for a wheelchair in Appellant's home.

Appellant bears the burden of proving by a preponderance of the evidence that the Department erred in denying the prior authorization request.

Given the record and available information in this case, the undersigned Administrative Law Judge finds that Appellant has failed to meet her burden of proof and that the Department's decision must therefore be affirmed. Per the above policy, activity chairs are considered to be children's products and, as such, coverage for them is limited to beneficiaries under the age of ██████████. Appellant is undisputedly past that age and the Department's decision was proper. Moreover, the fact that Appellant seeks an activity chair rather than the wheelchair suggested by the Department because the wheelchair may be too big for Appellant's house does not justify an exception to the clear policy in this case and the undersigned Administrative Law Judge is bound by the applicable policy

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly denied Appellant's prior authorization request for an activity chair and accessories.

IT IS THEREFORE ORDERED THAT:

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

Steven Kibit

Steven Kibit
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Health and Human Services

Date Signed: ██████████r██████████

Date Mailed: ██████████.██████████

SK/db

cc: ██████████
██████████
████████████████████
██████████

***** 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.