RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

[redacted]

Date Mailed: June 17, 2016
MAHS Docket No.: 16-005989
Agency No.: [redacted]
Petitioner: [redacted]

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

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 Petitioner's request for a hearing.

After due notice, a hearing was held on 6/16/16. Petitioner appeared. [redacted] appeared as a hearing representative on behalf of the Petitioner.

[redacted], Appeals Review Officer (ARO) represented the Department of Health and Human Services (Department). [redacted], Analyst for the MDHHS Program Review Division appeared as a witness.

ISSUE

Did the Department properly deny Petitioner's request for prior authorization?

FINDINGS OF FACT

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

1. Petitioner is a [redacted]-year-old female Medicaid beneficiary who has been diagnosed with multiple sclerosis and lumbar stenosis. (See Exhibit A.12).

2. Petitioner has Medicare and Medicaid. (Testimony).

3. Petitioner uses a wheel-chair with a seat elevator that is approximately 7 years old.

4. On or about [redacted] Petitioner filed a PA for replacement of the elevator and associated parts and labor. (Exhibit A.10).

5. The Department requested additional documentation of a Medicare Explanation of Benefits (EOB). Unrefuted evidence is that none was submitted.

6. On [redacted] the Department issued a Notice of Denial on the grounds that Petitioner failed to submit the EOB, along with other reasons for denial based on the then existing medical evidence.

7. On [redacted] Petitioner filed a hearing request. The Respondent had no documentation to show that Petitioner was informed of her 90 day window to request an administrative hearing. The Department initially but subsequently withdrew its motion for dismissal based on an untimely hearing request as it could not bring forth evidence of Notice. Since the denial, Petitioner has had at least 2 surgeries and accompanying hospitalizations, and her condition has worsened. Petitioner testified that she is no longer able to stand at all. (Exhibit A; Testimony).

CONCLUSIONS OF LAW

The Medical Assistance Program (MA) 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.

1.9 PRIOR AUTHORIZATION

> Medicaid requires prior authorization (PA) to cover certain services before those services are rendered to the beneficiary. The purpose of PA is to review the medical need for certain services.
>
> *MDHHS Medicaid Provider Manual, Practitioner Section*

Medicaid covered benefits are addressed for the practitioners and beneficiaries in the Medicaid Provider Manual (MPM). As stated in the MPM, “Medicaid covers the least costly alternative that meets the beneficiary's medical need for medical supplies, durable medical equipment or orthotics/prosthetics.” MPM, October 1, 2013 version, Medical Supplier Chapter, page 1.

Moreover, with respect to the replacement or repair of durable medical equipment in general, the MPM states:

> **SECTION 1 – PROGRAM OVERVIEW**
>
> Medicaid covers the least costly alternative that meets the beneficiary's medical need for medical supplies, durable medical equipment or orthotics/prosthetics.
>
> **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, 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 meets the standards of coverage published by MDHHS.

* * *

1.8 DURABLE MEDICAL EQUIPMENT

1.8.A. STANDARD EQUIPMENT AND CUSTOM-FABRICATED SEATING

Standard equipment and custom-fabricated seating must be medically necessary and meet the medical and/or functional needs of the beneficiary.
☐ Standard equipment and accessories are products ordered from manufacturer stock.
Measuring and custom-fitting a medical device to a beneficiary or custom-assembling a medical device to fit a beneficiary's needs using manufactured stock pieces is not considered to be custom-fabricated.
☐ Custom-fabricated seating is made from clinically derived, rectified castings, tracings, and other images (such as x-rays) of the beneficiary's body part.

1.10 NONCOVERED ITEMS

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

- Equipment for social or recreational purposes
- Padded footplates
- Air conditioner
- Custom seating for secondary and/or transport chairs
- Wheelchair accessories (e.g., horns, lights, bags, special colors, etc)

* * *

2.48.B. STANDARDS OF COVERAGE

Custom-Fabricated Seating Systems

Is the most economical alternative available to meet the beneficiary's mobility needs.

Wheelchair Accessories

Reimbursement may be made for separate wheelchair accessories that have designated HCPCS codes. Separate reimbursement may be considered for specific wheelchair accessory codes when provided in conjunction with the purchase of a manual wheelchair, power wheelchair, or an addition to an existing wheelchair if:
☐It is required to provide safety.
☐It is required for appropriate positioning.
☐It is the most economical alternative.

MPM, October 1, 2015 version
Medical Supplier Chapter

The Department presented policy that indicates that the State of Michigan Medicaid program is a payor of last resort. As such, individuals must show that other options have been exhausted. Specific to the case here, the Department cannot approve Petitioner's request if Medicare will pay for the elevator. In addition, if Medicare explicitly denies such DME, Michigan must likewise follow the policy. On the other hand, if Medicare simply excludes coverage, then Petitioner may be eligible if other eligibility criteria are met.

Here, the Department could not process Petitioner's request without documentation regarding Petitioner's Medicare EOB. Petitioner failed to submit the same. Thus, this ALJ upholds the denial based on the evidence of record. It is noted that Petitioner has indicated that her condition has worsened. The Respondent gave Petitioner necessary information at the administrative hearing to pursue a new PA, along with necessary and new medical documentation in order to have a new claim considered. The present case is upheld based on the evidence of record.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, decides that the Respondent correctly denied Petitioner's PA on [redacted].

IT IS, THEREFORE, ORDERED that:

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

JS/cg

Janice Spodarek
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30763
Lansing, Michigan 48909-8139

Agency Representative [redacted]

Petitioner [redacted]

DHHS Department Rep. [redacted]

Authorized Hearing Rep. [redacted]

DHHS -Dept Contact [redacted]