



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: July 26, 2016
MAHS Docket No.: 16-007201
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Lain

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 [REDACTED]. [REDACTED], Authorized Hearings Representative appeared on behalf of the Petitioner. [REDACTED], Appeals Review Officer; and [REDACTED] appeared to testify and represent the Department of Health and Human Services (Department or State or Respondent).

State's Exhibit a pages 1-37 and Petitioner's Exhibits 1-9 were admitted as evidence.

ISSUE

Did the Department properly deny Petitioner's prior authorization request for an Elite Bath 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. Petitioner is a Medicaid Beneficiary, date of birth [REDACTED].
2. Petitioner is diagnosed with G80.0 Spastic Quadriplegic Cerebral Palsy; Rett's syndrome F84.2 Rett's Syndrome.
3. On January 4, 2016, the Department received a prior authorization request from National Seating and Mobility for a Columbia – 8140 - Elite Bath System, Large 17 x 15' – Elite Bath transfer, STD Configurations (1) each (E0240) and Columbia – 8875-Head Support – Elite Positioning Accessories (1) each (E1399). (State's Exhibit A page 22)

4. On February 5, 2016, The Department sent a request for additional information
5. On March 14, 2016, the Department sent Petitioner notice of denial based upon the fact that more cost effective alternatives were available. The policy this denial is based on is Section 1, 1.3, 1.5, 1.10, 1.8, 2.8 of the Medical Supplier chapter of the Medical Provider Manual, which indicates: Chapter: Medical Supplier Policy: Section 1, 1.3 Place of Service, 1.5 Medical Necessity, 1.10 Non-covered items, 1.8 Durable Medical Equipment, 2.8 Commodes, Cost effective alternatives are available. (State's Exhibit A page 8)
6. On June 7, 2016, The Michigan Administrative Hearings system received a request for hearing to contest the denial.

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.

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.

* * *

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.

* * *

MDCH Medicaid Provider Manual (MPH)
Medical Supplier Section 1.5
October 1, 2015, pages 4-5

Medicaid payment rates may not exceed those paid by Medicare, per MPH Section 1.7.H. Reimbursement Amounts, page 12. Items that are not covered by Medicaid include adaptive equipment and custom seating for secondary and/or transport chairs, MPH, Medical Supplier, Section 1.10 Noncovered Items, page 17.

MPH, Medical Supplier, page 31 states: A shower commode chair may be covered if required to enable the beneficiary to shower independently or with assistance in the home setting and there are no cost effective alternatives.

Petitioner's representative asserts that the less expensive options were considered, including a similar style made of PVC material; however this option was too large and would require extensive bathroom remodel in order to fit functionally in Petitioner's current bathroom. Other alternatives considered required increased physical support and complexity to complete a safe transfer from two givers simultaneously within a small space, which increases the risk for physical injury to both Petitioner and her caregivers.

Petitioner's representative asserts that Petitioner cannot sit on her own. She presents without volitional motor control of her trunk, head/neck or limbs. She demonstrates severe neuro-motor spasticity and joint immobility, have no functional ability for sitting, and requires the full postural support of specialized seating for care dependent activities of daily living. (State's Exhibit A page 12)

In addition, Petitioner's primary caregivers, her parents, utilize a stationary non-specialized in-tub bath chair, within their primary home full bathroom, with conventional bathtub with handheld shower wand. Further, due to Petitioner's inability to sit on her own, she requires specialized seating; including in this case a sling style bath chair bathing system. Alternative bath chairs that feature a sling or platform seat, and seat back that have been trialed or considered, require Petitioner to receive direct physical support and stabilization by a minimum of two caregivers within a confined physical space; unreasonably increases the steps and interventions necessary to successfully complete the bathing process and adds risk of injury due to the complexity of the physical assistance required. Moreover, the recommended Elite Bath system provides for a rolling style bath reclined sling style chair, that allows and facilitates bed-side transfers; while then allowing a direct coupling to the in-tub bath system base, while the rolling seat base stays outside the tub. (State's Exhibit A page 13) The cost of the Bath system is \$ [REDACTED].

The Department Representative asserts that a more cost effective alternative is available – Columbia Elite reclining bath/shower transfer system Model 8120-RF for a Special price of \$ [REDACTED], (State's Exhibit A page 24), plus the head support pads and straps (8875) at \$ [REDACTED]. (State's Exhibit A page 25) A second more cost effective option is the Deluxe All Purpose Tilt-in-Space Shower Transfer Chair which allows a caregiver to transfer a patient into the shower and back out without any additional equipment; price: \$ [REDACTED]. (State's Exhibit A page 27)

Finally, the most cost effective alternative is a sponge bath or bathing in the bed because Petitioner is a quadriplegic and cannot support herself or move of her own volition. Petitioner should submit her request to Medicare first, as Medicaid is the payer of last resort.

This Administrative Law Judge finds that the Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with Department policy when it denied Petitioner's request for a Columbia – 8140 - Elite Bath System, Large 17 x 15' – Elite Bath transfer, STD Configurations (1) each (E0240) and Columbia – 8875-Head Support – Elite Positioning Accessories (1) each (E1399) based upon the fact that Petitioner did not establish medical necessity for the equipment and did not establish that the equipment was the most cost effective appropriate equipment available.

Based on the documentation submitted, Appellant did not meet the Medicaid standards of coverage and documentation requirements to establish medical necessity and or that

the Columbia – 8140 - Elite Bath System, Large 17 x 15' – Elite Bath transfer, STD Configurations (1) each (E0240) and Columbia – 8875-Head Support – Elite Positioning Accessories (1) each (E1399) requested are the not most cost effective under Department policy.

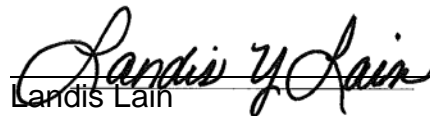
DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly denied the Petitioner's request for a Columbia – 8140 - Elite Bath System, Large 17 x 15' – Elite Bath transfer, STD Configurations (1) each (E0240) and Columbia – 8875-Head Support – Elite Positioning Accessories (1) each (E1399) because there are more cost effective alternatives available to the items that have been requested.

IT IS THEREFORE ORDERED that:

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

LL ■



Landis Lain
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

Authorized Hearing Rep.

[REDACTED]

Agency Representative

[REDACTED]

DHHS Department Rep.

[REDACTED]

DHHS -Dept Contact

[REDACTED]

Petitioner

[REDACTED]