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: February 15, 2017
MAHS Docket No.: 16-016768
Agency No.: [redacted]
Petitioner: [redacted]

ADMINISTRATIVE LAW JUDGE: Robert J. Meade

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 Petitioner's request for a hearing.

After due notice, a hearing was held on February 14, 2017. [redacted], Petitioner's mother, appeared and testified on Petitioner's behalf. [redacted], Appeals Review Officer, represented the Department of Health and Human Services (DHHS or Department). [redacted] appeared as a witness for the Department.

ISSUE

Did the Department properly deny Petitioner's prior authorization request for a headrest cover (canopy) for a new wheelchair?

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] Medicaid beneficiary, born [redacted], who has been diagnosed with CHARGE Association Syndrome (Colomoba, Heart defects, Atresta of choanae, Retardation, Genital underdevelopment, and Ear anomalies/hearing loss) as well as other ocular findings of nystagmus and esotropia. Petitioner is extremely light sensitive secondary to the coloboma in his left eye and is considered visually impaired under the guidelines for the State of Michigan. (Exhibit A, pp 8-9; Testimony).

2. On October 6, 2016, the Department received a prior authorization request from [redacted] for a Convaid EZ Rider Stroller with accessories for Petitioner. (Exhibit A, pp 13-25; Testimony).

3. On October 24, 2016, the Department sent Petitioner a Notification of Denial indicating that while the stroller, head rest and shoulder harness were approved, the headrest cover (canopy) was denied as, per policy, the canopy was not considered medically necessary as there were commercial products available that could meet Petitioner's needs. (Exhibit A, pp 11-12, 33-34; Testimony).

4. On November 18, 2016, the Michigan Administrative Hearing System (MAHS) received Petitioner's request for hearing. (Exhibit 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 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). Regarding the specific request in this case, *i.e.* a headrest cover (canopy), the applicable version of the MPM states in part:

> **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 Michigan Department of Health and Human Services (MDHHS) 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.

Below are common terms used throughout this chapter:

* * *

Durable Medical Equipment (DME)

DME are those items that are registered with the Food and Drug Administration (FDA), **(revised 7/1/15)** can stand repeated use, are primarily and customarily used to serve a medical purpose, are not useful to a person in the absence of illness or injury, and can be used in the beneficiary's home. Examples are: hospital beds, wheelchairs, and ventilators. DME is a benefit for beneficiaries when:

- It is medically and functionally necessary to meet the needs of the beneficiary.
- It may prevent frequent hospitalization or institutionalization.
- It is life sustaining.

* * *

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 MDHHS.

- 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.

MDHHS 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.

* * *

1.10 NONCOVERED ITEMS

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

* * *

- Wheelchair accessories (e.g., horns, lights, bags, special colors, etc.)

* * *

Medicaid Provider Manual
Medical Supplier Chapter
October 1, 2016, pp 1, 4-7, 17-19
Emphasis added

Here, the Department sent Petitioner written notice that the prior authorization request for a headrest cover (canopy) was denied on the basis that, per the above policy, the device was not medically necessary.

The Department's witness testified that the headrest cover (canopy) was denied per the above policy because there are commercial products available that could meet Petitioner's needs based on the documentation submitted. The Department's witness pointed to umbrellas that are designed to attach to wheelchairs and are available commercially. (Exhibit A, pp 33-34)

The Department's witness also indicated that the Department did not deny foot straps as stated in Petitioner's request for hearing because foot straps were not requested in the prior authorization request. The Department's witness pointed out that foot straps

do not require prior authorization and that Petitioner could return to his provider and ask the provider to bill Medicaid directly for the foot straps.

Petitioner's mother testified that they did look at the commercial alternatives to the canopy but they are not the best choice for Petitioner because they do not provide protection from the sun in all directions. Petitioner's mother explained that when Petitioner sees the sun he will look at it directly, so a cover that does not prevent him from doing this in all directions will not work. Petitioner's mother also testified that Petitioner's disability is not a short term thing and the commercial products suggested are inexpensive and likely would not last very long.

In response, the Department's witness indicated that Petitioner could ask her provider to resubmit the prior authorization request for the canopy with an explanation as to why the commercial products would not work and the Department could reconsider its decision.

Petitioner bears the burden of proving by a preponderance of the evidence that the Department erred in denying the prior authorization request in this case. Moreover, the undersigned Administrative Law Judge is limited to reviewing the Department's decision in light of the information that was available at the time the decision was made.

Given the record and available information in this case, the undersigned Administrative Law Judge finds that Petitioner has failed to meet his burden of proof and that the Department's decision must therefore be affirmed. Based on the information provided, specifically that Petitioner needed the canopy for protection from the sun and that hats or sunglasses would not work, the Department properly determined that there were commercial products available that could meet Petitioner's needs. If those commercial products do not actually meet Petitioner's needs, Petitioner can resubmit a prior authorization request from his provider that rules out the commercial products available. However, based on the information available with the original request, the denial was proper.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly denied Petitioner's prior authorization request for a headrest cover (canopy) for his wheelchair.

IT IS THEREFORE ORDERED THAT:

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

RM/sb

Robert J. Meade
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

DHHS Department Rep.

[redacted]