[redacted]
[redacted]
[redacted], MI 49036

Date Mailed: February 18, 2021
MOAHR Docket No.: 20-008005
Agency No.: [redacted]
Petitioner: [redacted]

ADMINISTRATIVE LAW JUDGE: Steven Kibit

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 Petitioner's request for a hearing.

After due notice, a telephone hearing was held on February 16, 2021. [redacted], Petitioner's legal guardian and grandmother, appeared and testified on the minor Petitioner's behalf. [redacted], one of Petitioner's private duty nurses, also testified as a witness for Petitioner. Allison Pool, Appeals Review Officer, represented the Respondent Department of Health and Human Services (DHHS or Department). Adam Schlaufman, Analyst, testified as a witness for the Department.

During the hearing, the Department offered one evidence packet/exhibit that was admitted into the record as Exhibit A, pages 1-33. Petitioner's representative indicated that she had one proposed exhibit, a recent letter from one of Petitioner's doctors, that she mistakenly had not submitted prior to the hearing. However, the undersigned Administrative Law Judge ruled that the record would not be left open so it could be submitted due to a lack of relevancy.

ISSUE

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

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 who has been diagnosed with spastic quadriplegic cerebral palsy; severe hypoxic ischemic encephalopathy; congenital partial dislocation of hip, bilateral; and chronic

respiratory with failure. (Exhibit A, pages 12-13).

2. He is 3'8" tall and weighs over 60 pounds. (Exhibit A, page 12).

3. In December of 2020, the Department received a prior authorization request for an adaptive car seat and accessories submitted on Petitioner's behalf by a medical provider, the University of Michigan Health System. (Exhibit A, pages 11-27).

4. Along with request, the provider submitted an Evaluation and Medical Justification for Complex Seating Systems and Mobility Devices that indicated, among other things, that Petitioner is incontinent in both bowel and bladder management. (Exhibit A, page 13).

5. Due to his incontinence, Petitioner wears diapers that are supplied by the Department. (Testimony of Petitioner's representative).

6. With respect to the medical reason for the one of the requested accessories, an incontinence cover, the medical provider also wrote:

> Incontinent seat cover: prevents the degradation of the car seat components which are required for crash protection (energy absorbing foam, harness buckle, latch plates and webbing, etc.), by preventing urine and tube feeding liquids from soaking into the seat cushion or other car seat hardware. A clean, dry seat and cushion is also required to maintain skin integrity and prevent the development of decubitus ulcers.
>
> *Exhibit A, page 22*

7. On December 18, 2020, the Department sent Petitioner a Notice of Amended Authorization stating that the request for the car seat and some accessories had been approved, but that the request for the incontinence cover was denied. (Exhibit A, pages 9-10).

8. With respect to the reason for the denial of the incontinence cover, the notice stated:

> - The documentation does not support the medical necessity for the requested incontinence cover. Commercial options are available and were not ruled out.

- Refer to the Medical Supplier chapter sections: 1.6 and 2.6.

Exhibit A, pages 9-10

9. On January 28, 2021, the Michigan Office Administrative Hearings and Rules (MOAHR) received the request for hearing filed in this matter regarding the Department's decision. (Exhibit A, pages 6-8).

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) and, in part, the applicable version of the MPM states:

1.6 MEDICAL NECESSITY

Medicaid covers medically necessary durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) for beneficiaries of all ages. DMEPOS are covered if they are the least costly alternative that meets the beneficiary's medical/functional need 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, clinical nurse specialist (CNS), 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, CNS 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 MDHHS 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 MDHHS 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 safety and effectiveness of the product for age-appropriate treatment has been substantiated by current evidence-based national, state and peer-review medical guidelines.

- The function of the service/device:

  - meets accepted medical standards, practices and 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.

Medicaid does not cover equipment and supplies that are considered investigational, experimental or have unproven medical indications for treatment.

Refer to the Prior Authorization subsection of this chapter for medical need of an item beyond the MDHHS Standards of Coverage.

NOTE: Federal EPSDT regulations require coverage of medically necessary treatment for children under 21 years of age, including medically necessary habilitative services. Refer to the Early and Periodic Screening, Diagnosis and Treatment Chapter for additional information.

The Healthy Michigan Plan (HMP) covers habilitative services for all ages. Refer to the Healthy Michigan Plan Chapter for additional information.

* * *

1.6.C. DOCUMENTATION

The Coverage Conditions and Requirements Section of this chapter specifies the documentation requirements for individual service areas. Additional information other than what is required on the prescription may be required. To provide this information, Medicaid accepts a certificate of medical necessity (CMNs will be mandatory for electronic PA), a letter or a copy of applicable medical record. The

prescribing physician must sign all documentation and the documentation (if a letter or applicable medical records) must state the beneficiary's name, DOB and ID number (if known) or SSN (if known).

1.6.D. CERTIFICATE OF MEDICAL NECESSITY REQUIREMENTS

A CMN must contain all of the following:

- Beneficiary's name and address;
- Beneficiary's date of birth (DOB);
- Beneficiary ID number (if initiated by the provider) or SSN;
- Prescribing physician's signature, date of signature, telephone number;
- The suppliers' name and address;
- The expected start date of the service (if different from the prescription date);
- A complete description of the item;
- The amount and length of time the item is needed;
- Beneficiary's diagnosis; and
- The medical necessity of the item.

For specifics, refer to the Coverage Conditions and Requirements section and the Face-to-Face (F2F) Visit Requirements subsection of this chapter.

MDHHS will accept a CMN initiated by a medical supplier, orthotist or prosthetist. However, only the beneficiary identifier fields and the areas detailing the description of the item with applicable HCPCS procedure codes are to be completed by the provider. The physician must complete the CMN by writing the medical reason or necessity for the specific item being requested. A medical supplier, orthotist, or prosthetist may not alter or write the medical reason or necessity for the item requested.

Additional documentation (including the CMN) must be current and within the timeframe stated in the Coverage Conditions and Requirements Section of this chapter, under Documentation for each item.

* * *

2.6 CHILDREN'S PRODUCTS [RE-NUMBERED 4/1/20]

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	Children's products are covered if one or more of the following applies: ▪ 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	*Documentation must be less than 180 days old and include all of the following:* ▪ 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.

MPM, October 1, 2020 version
Medical Supplier Chapter, pages 9-10, 12-13, 35-36
(italics added for emphasis)

Here, the Department's witness testified that Petitioner's prior authorization request for an incontinence cover was denied pursuant to the above policies and on the basis that the documentation submitted did not support the medical necessity for the requested item given that more cost-effective commercial options were available, but not ruled out. Specifically, he noted that hospital pads, diapers or briefs are available to address incontinence; they are more cost-effective than the requested incontinence cover; and their use was not addressed or ruled out in the prior authorization request as required. The Department's witness agreed that there is no set list of specific commercial items that must be ruled out prior to an incontinence cover be approved, but again testified that the requesting provider must document medical necessity and, if applicable, the reason economic alternatives cannot be used. He further testified that Petitioner can always submit a new prior authorization request if he has additional information to provide.

In response, Petitioner's representative testified that, while the State of Michigan pays for diapers for Petitioner and he uses them, the use of the diapers in this case without the incontinence cover is a safety hazard as Petitioner's diapers are insufficient to contain all of his urine on long car rides, such as the ones they have to take for medical appointments, and the overflow of urine can lead to the degradation of parts of the car seat. Similarly, Petitioner's representative testified that hospital pads and briefs are likewise insufficient and unsafe for Petitioner, with her view being that the use of pads for the car seat would be illegal. Overall, Petitioner's representative questioned why she has to justify requesting an item specifically designed to be safely used with the car seat.

Both Petitioner's representative and his nurse testified regarding Petitioner's excessively large voids or amounts of urine due to the fact that Petitioner will hold his urine as long as possible and has to take laxatives for bowel movements. Petitioner's representative further noted Petitioner's size and the need for the safe and legal incontinence cover.

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

Given the record and applicable policy in this case, Petitioner has failed to meet his burden of proof and the Department's decision must be affirmed.

While the undersigned Administrative Law Judge appreciates that the above policy does not contain any specific list of economic alternatives that must be ruled out prior to the requested item being approved, the above record demonstrates that there is clearly at least one potential economic alternative in this case, *i.e.* the diapers that Petitioner already wears, to address his incontinence and that neither the prior authorization request nor its supporting documentation addressed or ruled out that more economic alternative as required. Accordingly, the request did not demonstrate medical necessity for the incontinence cover and should have been denied.

Moreover, while both Petitioner's representative and one of his nurses testified during the hearing as to why Petitioner still needs the incontinence cover for his car seat even when wearing diapers, that information was not provided to the Department as part of the prior authorization request or its supporting documentation and the undersigned Administrative Law Judge is limited to reviewing the Department's decision in light of the information available at the time the decision was made.

To the extent Petitioner's representative has updated or additional information to provide, then she and the medical provider can always submit a new prior authorization request with that information. With respect to the decision at issue in this case however, the Department's decision must be affirmed given the available information and applicable policies.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, decides that the Department properly denied Petitioner's prior authorization request.

IT IS, THEREFORE, ORDERED that:

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

SK/sb

Steven Kibit
Administrative Law Judge
for Elizabeth Hertel, 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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

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

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

DHHS -Dept Contact

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