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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR



Date Mailed: January 20, 2023
MOAHR Docket No.: 22-003682
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

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 December 21, 2022. [REDACTED] appeared and testified on behalf of Petitioner. Angela King, Respiratory Therapist, also appeared and testified for Petitioner. Leigha Burghdoff, Appeals Review Officer, represented the Respondent Department of Health and Human Services (DHHS or Department). Laura Hinkle 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 1-39.

ISSUE

Did the Department properly deny Petitioner's prior authorization request for a VOCSN multifunction ventilator?

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 Medicaid beneficiary who has been diagnosed with myotubular myopathy, Tracheostomy dependent, chronic respiratory failure, and ineffective airway clearance (Exhibit A, page 14).
2. On April 28, 2022, the Department received a prior authorization request for a VOCSN multifunction ventilator (Exhibit A, page 13).

3. As part of that request and its supporting documentation, the provider stated in part:

We are out of state provider but we provide
VOCSN ventilators and this patient (sic) doctor
wants patient use this equipment

Exhibit A, page 13

4. On May 26, 2022, the Department sent Petitioner written notice that the request had been denied on the basis that “Michigan Medicaid does not cover the VOCSN multifunction ventilator, it is not considered medically necessary as all of the functions of this ventilator are already covered separately and the documentation received indicates the beneficiary’s current equipment meets his needs.” (Exhibit A, page 11).
5. On August 23, 2022, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the request for hearing filed in this matter regarding the Department’s decision. (Exhibit A, page 8).
6. The medical order documentation included in the exhibits states the following: “Today we discussed transition to VOCSN ventilator at length which would allow for improved daytime portability of vent as well as cough assist, suction, nebulizer.” (Exhibit A, pp.18-19)

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), 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.
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- 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 Michigan Department of Health and Human Services Medicaid Provider Manual Version Medical Supplier Date: January 1, 2023, Page 10 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. MPM Medical Supplier, 7/1/22

2.48 VENTILATORS – Definition: A ventilator is a device designed to intermittently or continuously assist or control pulmonary ventilation.

- A negative pressure ventilator exerts negative (sub atmospheric) pressure on the exterior chest wall.
- A positive pressure ventilator ventilates the lungs as the result of a positive pressure applied to the airway.

Standards of Coverage - Negative and positive pressure ventilators may be covered when there is a respiratory related diagnosis (e.g., neuromuscular disease, thoracic restrictive disease, chronic respiratory failure) and the beneficiary requires ventilator assistance. Michigan Department of Health and Human Services Medicaid Provider Manual Version Medical Supplier Date: January 1,

2023, Page 117 Documentation must be less than 90 days old and include the following:

- Respiratory diagnosis/medical condition related to the need for the ventilator.
- Type of ventilator ordered.
- Ventilator settings.
- Number of hours beneficiary is required to use the ventilator.

PA Requirements PA is required for all ventilators. Payment Rules All ventilators are a rental only item and are inclusive of the following:

- All accessories needed to use the unit (e.g., circuits, water feed sets, adaptors, temperature probes, filters, heated or nonheated humidifier, oxygen analyzer, water, or saline for humidifier, etc.).
- Education on the proper use and care of the equipment. Routine servicing and all necessary repairs or replacements to make the unit functional. An additional ventilator may only be covered to allow a beneficiary access to the community. When billing more than one vent, the additional vent must be reported using a NOC code. A backup ventilator in case of a power failure is not separately reimbursable. MPM Medical Supplier, 7/1/22.

Here, as discussed above, Petitioner's request for intrathecal VOCSN multifunction ventilator was denied pursuant to the above policies and on the basis that it was not medically necessary because all the functions of this ventilator are already covered separately, and the documentation received indicates the beneficiary's current equipment meets his needs.

In appealing the denial, 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.

During the hearing, the Department's witness credibly and fully explained why the request was denied. In particular, she noted that Petitioner has equipment that performs the functions of the requested equipment.

Petitioner's respiratory therapist Angela King testified that the VOCSN ventilator would better optimize the functions of Petitioner's current separate pieces of equipment and would reduce the risk of mistakes and cross-contamination of using separate equipment. She also testified that the increased functionality and portability of the VOCSN ventilator would be beneficial for Petitioner. Ms. King testified that other states she deals with have been authorizing this piece of equipment for beneficiaries in similar circumstances to the Petitioner.

With respect to the decision at issue in this case, 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**.



AM/pe

Aaron McClintic
Administrative Law Judge

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

Via Electronic Mail:

DHHS Department Contact

Gretchen Backer
400 S. Pine, 6th Floor
Lansing, MI 48909
MDHHS-PRD-Hearings@michigan.gov

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Via First Class Mail:

Petitioner

[REDACTED]
[REDACTED] MI [REDACTED]