



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: May 18, 2023
MOAHR Docket No.: 23-002166
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, 42 CFR 431.200 *et seq.* and 42 CFR 438.400 *et seq.* upon Petitioner's request for a hearing.

After due notice, a hearing was held on May 16, 2023. Petitioner appeared and testified on his own behalf. [REDACTED] Caregiver, appeared as a witness for Petitioner. Jenna Ford, Clinical Coordinator, represented Upper Peninsula Health Plan, the Medicaid Health Plan (MHP). Maureen Tyrrell, Utilization Manager appeared as a witness.

ISSUE

Did the MHP properly deny Petitioner's request for custom foot orthotics?

FINDINGS OF FACT

Based on the competent, material, and substantial evidence presented, the Administrative Law Judge finds as material fact:

1. Petitioner is a Medicaid beneficiary. (Exhibit A, p 1; Testimony)
2. On January 23, 2023, the MHP received a Prior Authorization Request from Teter Orthotics and Prosthetics on behalf of the Petitioner for custom foot orthotics. The diagnosis listed in the prior authorization request supporting the request for custom foot orthotics was achilles tendonitis. (Exhibit A, pp 9-17; Testimony)
3. On February 3, 2023, the request was sent to the MHP Medical Director for review. The Medical Director determined that the request for custom foot orthotics should be denied for failure to meet the Michigan Department of Health and Human Services (MDHHS) standards for coverage. (Exhibit A, pp 19-20; Testimony)

4. On February 3, 2023, the MHP sent Petitioner and his provider a Notice of Adverse Benefit Determination informing Petitioner and the provider that the request for custom foot orthotics was denied because the information supplied did not show that Petitioner met the MDHHS standards for coverage found in Section 2.23 of the Medicaid Provider Manual (MPM). (Exhibit A, pp 21-27; Testimony)
5. On February 10, 2023, Petitioner requested an internal appeal. (Exhibit A, p 2; Testimony)
6. On February 16, 2023, the MHP sent Petitioner's appeal to an independent physician reviewer who specializes in podiatry. (Exhibit A, p 2; Testimony)
7. On February 21, 2023, the independent physician reviewer upheld the denial for failure to meet MDHHS standards of coverage. (Exhibit A, pp 28-32; Testimony)
8. On February 23, 2023, the MHP sent Petitioner and his provider a Notice of Internal Appeal Decision – Denial, which upheld the original denial and provided Petitioner with his appeal rights. (Exhibit A, pp 35-37; Testimony)
9. On April 19, 2023, Petitioner's Request for Hearing was received by the Michigan Office of Administrative Hearings and Rules (MOAHR). (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 statute, the Social Welfare Act, the Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

On May 30, 1997, the Department received approval from the Health Care Financing Administration, U.S. Department of Health and Human Services, allowing Michigan to restrict Medicaid beneficiaries' choice to obtain medical services only from specified MHPs.

The Respondent is one of those MHPs and, as provided in the Medicaid Provider Manual (MPM), is responsible for providing covered services pursuant to its contract with the Department:

The Michigan Department of Community Health (MDCH) contracts with Medicaid Health Plans (MHPs), selected through a competitive bid process, to provide services to Medicaid beneficiaries. The selection process is described in a Request for Proposal (RFP) released by the Office of Purchasing, Michigan Department of Technology, Management & Budget. The MHP contract, referred to in this chapter as the Contract, specifies the beneficiaries to be served, scope of the benefits, and

contract provisions with which the MHP must comply. Nothing in this chapter should be construed as requiring MHPs to cover services that are not included in the Contract. A copy of the MHP contract is available on the MDCH website. (Refer to the Directory Appendix for website information.)

MHPs must operate consistently with all applicable published Medicaid coverage and limitation policies. (Refer to the General Information for Providers and the Beneficiary Eligibility chapters of this manual for additional information.) Although MHPs must provide the full range of covered services listed below, MHPs may also choose to provide services over and above those specified. MHPs are allowed to develop prior authorization requirements and utilization management and review criteria that differ from Medicaid requirements. The following subsections describe covered services, excluded services, and prohibited services as set forth in the Contract.

*Medicaid Provider Manual
Medicaid Health Plan Chapter
January 1, 2023, p 1
(Emphasis added)*

With regard to Orthopedic Footwear, the Medicaid Provider Manual states:

2.24 ORTHOPEDIC FOOTWEAR

Definition

Orthopedic footwear may include, but are not limited to, orthopedic shoes, surgical boots, removable inserts, Thomas heels, and lifts.

Standards of Coverage

Orthopedic shoes and inserts may be covered if any of the following applies:

- Required to accommodate a leg length discrepancy of ¼ inch or greater or a size discrepancy between both feet of one size or greater.
- Required to accommodate needs related to a partial foot prosthesis, clubfoot, or plantar fasciitis.
- Required to accommodate a brace (extra depth only are covered).

Surgical Boots or Shoes may be covered to facilitate healing following foot surgery, trauma or a fracture.

Noncovered Items

Shoes and inserts are noncovered for the conditions of:

- Pes Planus or Talipes Planus (flat foot)
- Adductus metatarsus
- Calcaneus Valgus
- Hallux Valgus

Standard shoes are also noncovered.

Documentation

Documentation must be less than 60 days old and include the following:

- Diagnosis/medical condition related to the service requested.
- Medical reasons for specific shoe type and/or modification.
- Functional need of the beneficiary.

Reason for replacement, such as growth or medical change.

CSHCS requires a prescription from an appropriate pediatric subspecialist.

PA Requirements

PA is not required for the following items if the Standards of Coverage are met:

- Surgical boots or shoes.
- Shoe modifications, such as lifts, heel wedges, or metatarsal bar wedges up to established quantity limits.
- Orthopedic shoe to accommodate a brace.
- Orthopedic shoes and inserts when the following medical conditions are present:
 - Plantar Fascial Fibromatosis
 - Unequal Leg Length (Acquired)

- Talipes Equinovarus (Clubfoot)
- Longitudinal Deficiency of Lower Limb, Not Elsewhere Classified
- Unilateral, without Mention of Complication (Partial Foot Amputation)
- Unilateral, Complicated (Partial Foot Amputation)
- Bilateral, without Mention of Complication (Partial Foot Amputation)
- Bilateral, Complicated (Partial Foot Amputation)

PA is required for:

- All other medical conditions related to the need for orthopedic shoes and inserts not listed above.
- All orthopedic shoes and inserts if established quantity limits are exceeded.
- Medical need beyond the Standards of Care.
- Beneficiaries under the age of 21, replacement within six months.
- Beneficiaries over the age of 21, replacement within one year.

Payment Rules

These are **purchase only** items.

*Medicaid Provider Manual
Medical Supplier Chapter
January 1, 2023, pp 68-69*

The MHP's witness testified that the requested custom foot orthotics were not a covered item under MHP policy or the Medicaid Provider Manual. The MHP's witness stated that the information submitted showed that Petitioner suffers from achilles tendonitis, however, the information does not show that Petitioner meets any of the Standards of Coverage for Orthopedic Footwear in the above policy. The MHP's witness indicated that the request was reviewed by the MHP's Medical Director and an independent outside physician, who both upheld the denial.

Petitioner testified that the custom foot orthotics were ordered by his physician and he really needs them. Petitioner indicated that his feet are really sore, especially when he walks.

Petitioner's caregiver testified that Petitioner has struggled with achilles tendonitis, and wanted to appeal to see if he could get the orthotics covered. Petitioner's caregiver indicated that Petitioner has tried every other avenue to get relief, including physical therapy, creams, and naproxen. Petitioner's caregiver testified that his sore feet also make his back extremely sore because he must walk funny to avoid the foot pain. Petitioner's caregiver testified that Petitioner is very active and the orthotics would be very helpful.

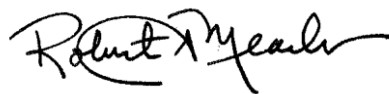
Petitioner has failed to satisfy his burden of proving by a preponderance of the evidence that the MHP improperly denied the requested custom foot orthotics. As indicated above, orthopedic inserts are covered if required to accommodate a leg length discrepancy of ¼ inch or greater or a size discrepancy between both feet of one size or greater; to accommodate needs related to a partial foot prosthesis, clubfoot, or plantar fasciitis; or to accommodate a brace (extra depth only are covered). Unfortunately, none of these factors are present for Petitioner so the denial was proper. While the undersigned can sympathize with Petitioner's condition, there is no authority to grant Petitioner any equitable relief or to ignore clear policy.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, the Administrative Law Judge finds that the MHP's denial of the Petitioner's request for custom foot orthotics was proper.

IT IS THEREFORE ORDERED that:

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



RM/sj

Robert J. Meade
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

PROOF OF SERVICE

I certify that I served a copy of the foregoing document upon all parties, to their last-known addresses in the manner specified below, this 18th day of May 2023.

S. James

S. James
**Michigan Office of Administrative
Hearings and Rules**

Via Electronic Mail:

Agency Representative

Jenna Ford BSN, RN
Upper Peninsula Health Plan
853 W. Washington Street
Marquette, MI 49855
JFord@uphp.com

Community Health Representative

Upper Peninsula Health Plan
Maureen Tyrrell
Marquette, MI 49855
Mtyrrell@uphp.com

DHHS Department Contact

MDHHS
Lansing, MI 48933
MDHHS-MCPD@michigan.gov

Via First Class Mail:

Petitioner

[REDACTED]
[REDACTED] MI [REDACTED]