[redacted]
[redacted] MI [redacted]

Date Mailed: May 31, 2023
MOAHR Docket No.: 23-002440
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 May 24, 2023. Petitioner [redacted] (Petitioner) appeared and testified on his own behalf. [redacted] Petitioner's mother, also testified as a witness for Petitioner. Allison Pool, Appeals Review Officer, represented the Respondent Department of Health and Human Services (DHHS or Department). Danielle Taylor, Utilization Analyst, testified as a witness for the Department.

During the telephone hearing, the Department submitted an evidence packet that was admitted into the record as Exhibit A, pages 1-24. No other proposed exhibits were submitted.

ISSUE

Did the Department properly deny Petitioner's prior authorization request for an oxygen concentrator and portable oxygen?

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 an enrolled Medicaid beneficiary. (Exhibit A, page 16).

2. On April 17, 2023, the Department received a prior authorization request for; among other things, an oxygen concentrator and portable oxygen submitted on Petitioner's behalf by a medical supplier. (Exhibit A, pages 13-15).

3. In that request, Petitioner's doctor only identified Petitioner's diagnosis as unspecified asthma, uncomplicated. (Exhibit A, page 15).

4. However, he also wrote that the medical reason for the portable oxygen was chronic obstructive pulmonary disease (COPD). (Exhibit A, page 15).

5. He further stated that testing of Petitioner on July 22, 2022, resulted in an oxygen saturation rate of 89%. (Exhibit A, page 15).

6. On April 20, 2023, the Department sent Petitioner written notice that the request for an oxygen concentrator and portable oxygen had been denied. (Exhibit A, pages 10-11).

7. With respect to the reason for the denial, the notice stated:

> The policy this denial is based on is Section 1.6 and 2.30 of the Medical Supplier chapter of the Medicaid Provider Manual. Specifically:
>
> - The submitted room air test from 2022 does not meet standards of coverage, and the documentation submitted does not support the medical necessity for exception. See Section 1.6 and 2.30 of The Medical Supplier Chapter in The Medical [sic] Provider Manual

Exhibit A, page 10

8. On May 2, 2023, 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, pages 5-9).

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, with respect to the equipment at issue in this case, the applicable version of the MPM states in part:

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.

* * *

2.30 OXYGEN, OXYGEN EQUIPMENT AND ACCESSORIES

Definition	Oxygen therapy includes, but is not limited to, stationary compressed systems, portable gaseous systems, stationary liquid systems, portable liquid systems, and concentrators.
Standards of Coverage	Stationary oxygen equipment and accessories may be covered in the home setting for either short-term (less than six months) or long-term (six months or greater) use. **For beneficiaries under age 21,** oxygen therapy may be covered when oxygen is required during a variety of activities (e.g., sleeping, feeding, resting) and there is an oxygen saturation rate of 93 percent or below or PO2 level of 65 mm HG or below. --- **For beneficiaries age 21 and older,** when the beneficiary requires oxygen for continuous use (test taken while the beneficiary is at rest, breathing room air), nocturnal use (test taken

	while sleeping), or exercise use (test taken during exercise) and the oxygen saturation rate is 88 percent or below or the PO2 level is 55 mm HG or below. Once the Standards of Coverage are met, the type of equipment covered is determined by the following: ▪ Medical diagnosis and/or condition related to the need for oxygen. ▪ Activity level. ▪ Amount of liter flow needed. The three main types of oxygen systems are: ▪ **Compressed Oxygen System** – Used primarily for intermittent use or low liter flow requirements (less than one liter per minute). A portable unit may be authorized if activities cannot be accomplished by the use of a stationary unit alone. ▪ **Concentrators** - Used for higher liter flows, usually one liter or more. A portable compressed oxygen unit may be authorized if activities cannot be accomplished by the use of a concentrator alone. ▪ **Liquid Oxygen System** - Used for high liter flow requirements. Liter flow must be ordered at more than four liters per minute. In cases where liquid oxygen is inappropriate, a compressed gas or concentrator system could be covered if criteria for that unit are

	met.
Documentation	Documentation must be less than 30 days old and include the following: ▪ Diagnosis/medical condition appropriate for the need of oxygen. ▪ Required liter flow (e.g., two liters per minute). An order for "Oxygen PRN" or "Oxygen as Needed" does not meet this requirement. ▪ Hours used per day (e.g., eight hours a day). For intermittent use (less than eight hours per day), indicate activity or time of day. An order for "Oxygen PRN" or "Oxygen as Needed" does not meet this requirement. ▪ Duration of need (e.g., three months, six months or lifetime). ▪ Delivery system to be used (e.g., concentrator, compressed gas, liquid). ▪ Current PO2 or oxygen saturation level while on room air. ▪ For liquid oxygen, total number of pounds required per month. ▪ A prescription from a pediatric pulmonologist, a neonatologist, a pediatrician intensivist, and/or pediatric cardiologist is required under the CSHCS program. **Equipment Maintenance** - Verification of the proper use, care and function (e.g., verification that the equipment delivers the proper

	percentage of liter flow) must be performed according to the manufacturer's requirements. The following information must also be maintained in the patient's file: ▪ The name of the manufacturer. ▪ The manufacturer's requirements for verification of proper use, care and function of the equipment. ▪ The date that each equipment verification was performed. **Six-Month Recertification** - After the initial prescription for home oxygen therapy, a six-month follow-up certificate of medical necessity (CMN) must be obtained. At this time, a new pO2 or oxygen saturation test with the beneficiary on room air must be obtained and indicated on the CMN, along with the date of the test, to substantiate continued need for treatment. **Annual Recertification** - Following the first year of oxygen treatment, a new CMN and prescription are required annually. An updated lab test is not required unless there is a change in the level of oxygen usage or type of delivery system required. The most recent pO2 or oxygen saturation level and the date of the test must be documented on each annual CMN.
PA Requirements	PA is not required for gaseous stationary, concentrators, and portable oxygen systems if the Standards of Coverage are met and the beneficiary has one of the following diagnoses descriptions:

	▪ Bronchiectasis ▪ Bronchopulmonary Disease ▪ Chronic Airway Obstruction ▪ Chronic Bronchitis ▪ Chronic Pulmonary Heart Disease ▪ Coccidioidomycosis ▪ Congenital Central Alveolar Hypoventilation Syndrome ▪ Congenital Heart Disease ▪ Heart Failure ▪ Idiopathic Sleep Related Nonobstructive Alveolar Hypoventilation ▪ Malignant Neoplasm of Trachea, Bronchus, and Lung ▪ Muscular Dystrophies and other Myopathies ▪ Myoneural Disorders ▪ Other Alveolar and Parietoalveolar Pneumonopathy ▪ Other and Unspecified Disorders of Metabolism (Cystic Fibrosis) ▪ Other Diseases of Blood and Blood -Forming Organs (Secondary Polycythemia, Familial Polycythemia) ▪ Other Emphysema ▪ Pneumoconioses and other Lung

	Diseases due to External Agents ▪ Postinflammatory Pulmonary Fibrosis ▪ Primary Central Sleep Apnea ▪ Pulmonary Eosenophilia ▪ Pulmonary Tuberculosis ▪ Secondary Malignant Neoplasm of Respiratory and Digestive Systems ▪ Sleep Related Hypoventilation Hypoxemia in Conditions Classified Elsewhere ▪ Tracheomalacia ▪ PA is not required for gaseous stationary or concentrators for the condition of obstructive sleep apnea (adult) (pediatric). PA is required for: ▪ Oxygen required for short-term use only. ▪ Liquid oxygen systems. ▪ Liquid oxygen contents only. ▪ Medical need for long-term oxygen use does not meet Standards of Coverage.
Payment Rules	All oxygen equipment is a **rental only** and is inclusive of the following: ▪ All necessary accessories (e.g., regulator, tubing, mask or cannula, contents base, etc.). Stationary gaseous or liquid oxygen contents are separately

	payable only when the patient owns the equipment and the coverage criteria has been met. ▪ The rental payment includes routine servicing and all necessary repairs or replacements to make the rented DME functional. The equipment should be checked according to manufacturer's specifications. **Combination of Equipment Covered:** ▪ Only one delivery method is covered per month (i.e., gaseous, gaseous/concentrator or liquid). ▪ A portable compressed gaseous system or liquid system will only be provided in addition to an existing stationary system, unless oxygen is needed for ambulation only. ▪ A backup cylinder is considered part of the inclusive reimbursement for the oxygen system. **Nursing Facility Residents:** ▪ For a nursing facility resident, the DME provider may bill for oxygen gas, equipment, and supplies only when used for prolonged daily use. Intermittent or infrequent use of these items is included in the nursing facility per-diem rate. Based on this site of service, the monthly rental payment issued to the DME provider for the oxygen concentrator will be reduced

	compared to the payment for equipment used in the home. ▪ For a County Medical Care Facility or Hospital Long Term Care Unit, the DME provider cannot bill for oxygen gas, equipment and supplies for any resident. NOTE: The rental of a concentrator is billable by a Medical Supplier. Frequent or prolonged use is defined as: ▪ Long-term daily basis. ▪ At least eight hours duration or more per day.

MPM, April 1, 2023, version
Medical Supplier Chapter
Pages 9-10, 79-82

Here, as discussed above, Respondent denied Petitioner's request for an oxygen concentrator and portable oxygen pursuant to the above policies.

In support of that decision, the Department's Utilization Analyst testified that the request was denied in this case as it did not meet the applicable standards of coverage, with Petitioner's oxygen saturation rate listed at 89 percent and the above policy requiring a rate of 88 percent or below. She also noted that the test relied upon in the request is from July of 2022; while the above policy requires that documentation be no more than 30 days old. She furthered testified that the request only identified Petitioner's diagnosis as unspecified asthma; uncomplicated, but also identified the medical reason for the portable oxygen was chronic obstructive pulmonary disease (COPD), with oxygen to treat COPD not requiring prior authorization.

In response, Petitioner testified that he has been on oxygen for seven years and this denial was the first time it has been an issue. He also testified that the test from July of 2022 was the last time he saw the doctor who signed the request, but that he has been in and out of the hospital multiple times since then and his oxygen saturation rate has been found to be lower there. His mother further testified that Petitioner really needs the oxygen.

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 the 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 Petitioner may have been approved for oxygen and oxygen equipment before, the above policies clearly provide that specific standards of coverage must be met before oxygen, or oxygen equipment and accessories, can be approved and those applicable standards were not met for the request at issue in this case.

For example, for beneficiaries age 21 or older, like Petitioner, policy requires an oxygen saturation rate of 88 percent or below while the request in this case identified an oxygen saturation rate of 89 percent.

Moreover, policy also requires that documentation be less than 30 days old and the request in this case relied on a test completed in July of 2022.

To the extent Petitioner has additional or updated information to provide regarding his need for an oxygen concentrator and portable oxygen, then he and his providers can always submit a new prior authorization request in the future along with that information. Moreover, as testified to by the Department's witness and provided for in policy, if Petitioner is diagnosed with COPD, then no prior authorization may be required.

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.**

Steven Kibit

SK/sj

Steven Kibit
Administrative Law Judge

NOTICE OF APPEAL: Petitioner 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 and/or attorneys, to their last-known addresses in the manner specified below, this 31st day of May 2023.

S. James

S. James
Michigan Office of Administrative Hearings and Rules

Via Electronic Mail:

DHHS Department Contact
Gretchen Backer
MDHHS
Lansing, MI 48909
MDHHS-PRD-Hearings@michigan.gov

Agency Representative
Allison Pool
MDHHS Appeals
Lansing, MI 48909
PoolA@michigan.gov

DHHS Department Representative
M. Carrier
MDHHS Appeals
Lansing, MI 48909
MDHHS-Appeals@michigan.gov

Via First Class Mail:

Petitioner
[redacted]
[redacted] MI [redacted]