[redacted]
[redacted], MI [redacted]

Date Mailed: January 30, 2020
MOAHR Docket No.: 19-012460
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 January 23, 2020. [redacted], Petitioner's Clinical Case Manager, appeared and testified on Petitioner's behalf. Petitioner also testified as a witness on her own behalf. John Lambert, Appeals Review Officer, represented the Respondent Department of Health and Human Services (DHHS or Department). Michelle Mapes, Registered Nurse (RN) Analyst, testified as a witness for the Department.

During the hearing, the Department submitted one evidence packet/exhibit that was admitted into the record as Exhibit A, pages 1-17. Petitioner did not submit any exhibits.

ISSUE

Did the Department properly deny Petitioner's prior authorization request for disposable inner cannulas?

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] ([redacted]) year-old Medicaid beneficiary who has been diagnosed with chronic obstruction pulmonary disease with acute exacerbation; gastrostomy status; tracheostomy status; and obstructive sleep apnea. (Exhibit A, page 10).

2. On October 1, 2019, the Department received a prior authorization request for disposable inner cannulas submitted on Petitioner's behalf by her doctor. (Exhibit A, pages 6-13).

3. As part of that request, Petitioner's doctor wrote that it was medically necessary for Petitioner to change her tubing daily due to mucus plugging and to decrease the chance of infection. (Exhibit A, page 12).

4. In reviewing the request, the RN Analyst determined that Petitioner's needs could be met through the use of non-disposable inner cannulas; the use of non-disposable inner cannulas would be less costly; and that Petitioner's request should therefore be denied. (Testimony of RN Analyst).

5. A physician reviewer for the Department also reviewed the prior authorization request and concluded that the submitted documentation did not support the medical necessity for the requested items. (Exhibit A, page 14).

6. On October 15, 2019, the Department sent Petitioner written notice that the request for disposable inner cannulas had been denied. (Exhibit A, pages 8-9).

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

> The policy this denial is based on is Section 1.6 of the Medical Supplier chapter of the Medicaid Provider Manual. Specifically:
>
> - Medicaid does not cover disposable inner cannulas as non-disposable inner cannulas can be cleaned and reused and are the economic alternative. Four (4) non-disposable cannulas are allowed per month without PA. Submitted documentation does not support beneficiary having a current infection/recurrent infections.
>
> - Please note: As of the date of this letter, MDHHS records indicated the beneficiary's eligibility ends 12/31/2019.
>
> - Denial based on Medical Supplier Chapter, Section 1.6

Exhibit A, page 8

8. On December 3, 2019, the Michigan Office Administrative Hearings and Rules (MOAHR) received the request for hearing filed in this matter regarding that denial. (Exhibit A, pages 4-6).

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 medical equipment and supplies, the applicable version of the MPM states in part:

> **1.6 MEDICAL NECESSITY [CHANGE MADE 10/1/19]**
>
> 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 **(added per bulletin MSA 19-10)** 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.

MPM, October 1, 2019 version
Medical Supplier Chapter, pages 7-8
(Internal highlighting omitted)
(Italics added for emphasis)

Here, the Department's witness testified that Petitioner's prior authorization request for disposable inner cannulas was denied pursuant to the above policy and on the basis that the requested items were not the least costly method of meeting Petitioner's needs. Specifically, the Department's witness testified that Petitioner's needs could be met through the use of non-disposable inner cannulas, which can be cleaned and reused, and which would be less costly than the requested disposable inner cannulas. She also testified that, as found by herself and the Department's physician reviewer, Petitioner's doctor did not establish any medical necessity for using disposable inner cannulas, with

a general statement that they would reduce the risk of infection insufficient, especially given the lack of any information suggesting that Petitioner has had recurrent infections in the past.

In response, Petitioner and her representative testified that Petitioner has been in the hospital at least three times since the denial in this case because of difficulties in breathing. They also testified that Petitioner's trach is only designed to receive disposable inner cannulas. Petitioner's representative further testified that, during the hospitalizations, medical professionals advised her that Petitioner needed to use disposable inner cannulas. Petitioner also testified that she cleans the four disposable inner cannulas she receives each month constantly, but that she is still having problems.

Petitioner bears the burden of proving by a preponderance of the evidence that the Department erred in denying her 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 her burden of proof and the Department's decision must be affirmed. The above policy clearly provides that medical supplies are only covered if they are the least costly alternative that meets a beneficiary's needs and the evidence in this case fails to show that non-disposable inner cannulas, which, if cleaned and reused are undisputedly a less costly alternative than the requested disposable inner cannulas, cannot meet Petitioner's needs. Beyond generally stating that disposable inner cannulas would reduce the risk of infection, Petitioner's doctor failed to identify any specific reason why Petitioner would need disposable inner cannulas and, as noted by the Department, there is no evidence that Petitioner has had issues with infections in the past or that she cannot use non-disposable inner cannulas. Moreover, while Petitioner and her representative testified during the hearing that Petitioner's trach is only designed to receive disposable inner cannulas, the prior authorization request did not identify any such issue and 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. Similarly, while Petitioner and her representative testified that Petitioner has been hospitalized multiple times since the denial, that information was likewise not provided to the Department as part of the request.

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

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/sb

Steven Kibit
Administrative Law Judge
for Robert Gordon, 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

Gretchen Backer
400 S. Pine, 6th Floor
PO Box 30479
Lansing, MI
48909

DHHS Department Rep.

M. Carrier
Appeals Section
PO Box 30807
Lansing, MI
48933

Petitioner

[redacted], MI

Authorized Hearing Rep.

[redacted], MI

Agency Representative

John Lambert
PO Box 30807
Lansing, MI
48909