



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: July 13, 2020
MOAHR Docket No.: 20-002814
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 June 23, 2020. [REDACTED], Petitioner's mother, appeared and testified on the minor Petitioner's behalf. Florence Scott-Emuakpor, Appeals Review Officer, represented the Respondent Department of Health and Human Services (DHHS or Department). Jessica Reich, Departmental Analyst, testified as a witness for the Department.

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

ISSUE

Did the Department properly deny Petitioner's request for a walking boot?

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 [REDACTED]-year-old Medicaid beneficiary who had a right foot injury in February of 2020. (Exhibit A, page 7).
2. On March 17, 2020, Petitioner had a follow-up visit with her doctor, during which the doctor noted that the foot was healing and ordered that Petitioner's foot be immobilized in a cam walking boot for four weeks. (Exhibit A, pages 7-11).
3. The walking boot was provided the same day. (Exhibit A, pages 7-11).

4. On April 2, 2020, the Department received a request for the walking boot for Petitioner submitted on Petitioner's behalf by her doctor. (Exhibit A, page 12).
5. On April 10, 2020, the Department sent Petitioner written notice that the request for a walking boot had been denied. (Exhibit A, pages 12-13).
6. The notice further stated that the denial was based on Sections 1.8.C, 1.8.D and 1.12 of the Medical Supplier Chapter of the Medicaid Provider Manual (MPM) and pursuant to the fact that no prior authorization was requested for the walking boot as required and Petitioner did not meet the criteria for a retroactive authorization. (Exhibit A, pages 12-13).
7. On May 5, 2020, the Michigan Office Administrative Hearings and Rules (MOAHR) received the request for hearing filed in this matter regarding the Department's decision. (Exhibit A, page 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, in part, the applicable version of the MPM states:

1.8 PRIOR AUTHORIZATION

Prior authorization (PA) is required for certain items before the item is provided to the beneficiary or, in the case of custom-fabricated DME or prosthetic/orthotic appliances, before the item is ordered. To determine if a specific service requires PA, refer to the Coverage Conditions and Requirements Section of this chapter and the Medicaid Code and Rate Reference tool. (Refer to the Directory Appendix for website information.)

* * *

1.8.C. EMERGENCY PRIOR AUTHORIZATION

A provider may contact MDHHS to obtain a verbal PA when the prescribing physician has indicated that it is medically necessary to provide the service within a 24-hour time period.

To obtain a verbal PA, the provider may call the Program Review Division or fax a request. (Refer to the Directory Appendix for contact information. Refer to the Forms Appendix for copies of forms MSA-1653-B and MSA-1653-D and completion instructions.)

If an emergency service is required during nonworking hours (i.e., after 4:00 p.m., weekends, and State of Michigan holidays), the provider must contact the Program Review Division on the next available working day.

The following steps must still be completed before an actual PA number is issued for billing purposes:

- Submission of the PA request to MDHHS within 30 days of the verbal authorization. (Refer to the Forms Appendix for copies of forms MSA-1653-B and MSA-1653-D and completion instructions.)
- Submission of the supporting documentation (e.g., prescription and CMN, physician letter, or applicable medical record).

The PA number will not be given for billing MDHHS and the provider will not be reimbursed if:

- The beneficiary was not eligible when the service was provided.
- A completed PA request (MSA-1653-B) is not received within 30 days of the verbal authorization.
- Required prescription and documentation is not received.
- The prescription and/or documentation are not signed within 30 days of the effective date.
- The prescription and/or documentation are not received within 30 days of the date of service (DOS).

- The medical need for the service is different than what was verbally given and does not fall within the Standards of Coverage.

Verbal authorization does not guarantee payment or eligibility.

1.8.D. RETROACTIVE PRIOR AUTHORIZATION

Services provided before PA is requested will not be covered unless the beneficiary was not eligible on the DOS and the eligibility was made retroactive. If the MDHHS record does not show that retroactive eligibility was provided, then the request for retroactive PA will be denied.

*MPM, April 1, 2020
Medical Supplier Chapter, pages 13-16*

Here, the Department's witness testified that Petitioner's request for a walking boot was denied pursuant to the above policies. Specifically, she noted that the request was denied because no prior authorization was requested for the walking boot as required and Petitioner did not meet the criteria for a retroactive authorization. She further testified that, if the provider accepted Petitioner as a Medicaid patient, the provider cannot bill Petitioner for the provider's failure to obtain proper authorization and that, if Petitioner is being charged, then Petitioner's mother should contact the Department's beneficiary complaint hotline.

In response, Petitioner's mother testified that the walking boot was necessary and that they need it to be covered. She also testified that the provider accepted Petitioner as a Medicaid patient. She further testified that the boot was provided in March and that she was unaware of any prior authorization requirement. Petitioner's mother did note that she has not been billed.

Petitioner bears the burden of proving by a preponderance of the evidence that the Department erred in denying her 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 policies in this case, Petitioner has failed to meet her burden of proof and the Department's decision must be affirmed. The above policies expressly provide that prior authorization is required for the equipment requested for Petitioner and it is undisputed that such prior authorization was not sought in this case, either in writing or verbally pursuant to the emergency prior authorization process described above, prior to the walking boot being provided. Moreover, as Petitioner was

an eligible Medicaid beneficiary on the date of service, Petitioner does not meet the criteria for a retroactive authorization.

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 request for a walking boot.

IT IS, THEREFORE, ORDERED that:

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

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

Agency Representative

Florence Scott-Emuakpor
222 N. Washington Square
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Lansing, MI , MI
48933

Petitioner

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