[redacted]
[redacted], MI [redacted]

Date Mailed: October 2, 2020
MOAHR Docket No.: 20-005392
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 upon the Petitioner's request for a hearing.

After due notice, a telephone hearing was held on September 29, 2020. Petitioner appeared and testified on his own behalf. Nicole Sandstrom, Clinical Services Manager, appeared and testified on behalf of Upper Peninsula Health Plan, the Respondent Medicaid Health Plan (MHP).

During the hearing, Petitioner's request for hearing was admitted into the record as Exhibit #1, page 1. Respondent also submitted an evidence packet that was admitted into the record as Exhibit A, pages 1-60.

ISSUE

Did Respondent properly deny Petitioner's prior authorization request for a three-wheeled power mobility device?

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 and Medicare beneficiary who is enrolled in the Respondent MHP. (Exhibit A, page 39; Testimony of Respondent's representative).

2. On June 2, 2020, Respondent received a prior authorization request for a three-wheeled power mobility device for Petitioner. (Exhibit A, pages 38-55).

3. The documentation submitted along with that request, including a physical

therapy evaluation and a letter of medical necessity, provided that Petitioner's medical history included high blood pressure, kidney disease, an injury to his left hip, and left hip joint replacement; and that Petitioner has been diagnosed with obesity, difficulties walking, and muscle weakness. (Exhibit A, pages 40-42).

4. The physical therapy evaluation also noted that Petitioner uses a cane, but has an unsteady gait and limited range of motion; and that he reports having great difficulty walking for distances that require him to be on his feet for more than five minutes, propelling a wheelchair is too much of a strain, and that he feels he is in need of a mobility device to have freedom to do the things he desires to do. (Exhibit A, pages 40-41).

5. The letter of medical necessity further provided that Petitioner's goals included walking greater distances and attending sporting events; Petitioner does not have the strength to propel himself in a manual wheelchair; the three-wheeled power mobility device is not needed for activities of daily living, but is needed for shopping and to cover distances greater than five feet; and that the time Petitioner would spend on the device would be limited. (Exhibit A, pages 42-47).

6. On June 4, 2020, Respondent sent Petitioner a written Notice of Denial of Medical Coverage stating that the request for a three-wheeled power mobility device had been denied. (Exhibit A, pages 4-8).

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

> The Medicare Local Coverage Determination (LCD): Power Mobility Devices (L33789) states that a power mobility device is to be used to help with toileting, feeding, dressing, grooming, and bathing in the home. Also, the Michigan Medicaid Provider Manual, Chapter Medical Supplier, Section 2.47 Wheelchairs, Pediatric Mobility and Positioning Medical Devices, and Seating Systems, 2.47.B. Standards of Coverage states: a Power Wheelchair or Power-Operated Vehicle (POV) may be covered if you need it for at least four hours every day. Records state you will be using the scooter for outside the home as you need it. Your doctor may send more records for review.

Exhibit A, page 4

8. On June 30, 2020, Petitioner requested an Internal Appeal with Respondent regarding the denial of the prior authorization request.

(Exhibit A, page 9).

9. As part of his appeal, Petitioner requested that Respondent reviewed his medical records with the doctor who recommended the three-wheeled power mobility device. (Testimony of Respondent's representative).

10. On July 2, 2020, Respondent received additional documentation regarding Petitioner's June 29, 2020 office visit with that doctor. (Exhibit A, pages 56-60).

11. In the Impression & Recommendations section of the report, Petitioner's doctor wrote:

> [Petitioner] is 2 years status post left hip replacement, doing very well. His left hip is not giving him any problems. He may require right hip replacement in the future. [Petitioner] does have end-stage kidney disease and is on dialysis. He has an AV fistula being placed in the future. I will see [Petitioner] again in a year with repeat low pelvis and a lateral x-ray of both hips.

Exhibit A, pages 57-58

12. On July 17, 2020, Respondent sent Petitioner a written Notice of Appeal Decision stating that Petitioner's appeal had been reviewed and denied. (Exhibit A, pages 8-11).

13. With respect to the reason for its decision, Respondent wrote in part:

> The Michigan Medicaid Provider Manual, Chapter Medical Supplier, Section 2.47 Wheelchairs, Pediatric Mobility and Positioning Medical Devices, and Seating Systems, 2.47.B. Standards of Coverage states: A Power Wheelchair or Power-Operated Vehicle (POV) in Both Community Residential and Institutional Residential Settings may be covered if all are met:
>
> - Lacks ability to propel a manual wheelchair, or has a medical condition that would be compromised by propelling a manual wheelchair, for at least 50 feet over hard, smooth, or carpeted surfaces with or without rest intervals.
>
> - Requires use of a wheelchair for at least four hours throughout the day.

- Is able to safely operate, control, and maneuver the wheelchair in their environmental setting, including through doorways and over thresholds up to 1.", as appropriate.

- Has mental and physical ability that permits safe operation of a power mobility device.

- Has visual acuity (able to see) that permits safe operation of a power mobility device.

- For a three-wheeled power mobility device, has sufficient trunk control and balance.

Your appeal was reviewed by medical doctor board certified in Physical Medicine & Rehabilitation. You must meet all criteria set by either Medicare or Michigan Medicaid (we use the criteria that is more favorable to you). The record provided did not show that you were unable to use a lesser device such as a lightweight manual wheelchair, standard manual wheelchair or use of a walker.

Exhibit A, page 10

14. The Notice of Appeal Decision also advised Petitioner of his right to request a Michigan Medicaid Fair Hearing with the Michigan Office of Administrative Hearings and Rules (MOAHR) if he disagreed with the decision. (Exhibit A, page 11).

15. In addition to notifying Petitioner of his right to request a Medicaid Fair Hearing, Respondent also forwarded Petitioner's case to an Independent Review Entity for Medicare for a second review, with the entity subsequently upholding the denial. (Exhibit A, pages 14-20).

16. On August 26, 2020, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the request for hearing filed by Petitioner in this matter regarding Respondent's decision. (Exhibit #1, page 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.

In 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 Medicaid Health Plans.

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 Health and Human Services (MDHHS) 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 MDHHS 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.

MPM, October 1, 2020 version
Medicaid Health Plan Chapter, page 1
(underline added for emphasis)

Moreover, with respect to power-operated vehicles like the one requested in this case, the MPM also provides in part:

Power Wheelchair or Power-Operated Vehicle (POV) in Both Community Residential and Institutional Residential Settings	May be covered if the beneficiary meets all of the following: ▪ Lacks ability to propel a manual wheelchair, or has a medical condition that would be compromised by propelling a manual wheelchair, for at least 60 feet over hard, smooth, or carpeted surfaces with or without rest intervals. ▪ Requires use of a wheelchair for at least four hours throughout the day. ▪ Is able to safely operate, control and maneuver the wheelchair in their environmental setting, including through doorways and over thresholds up to 1½", as appropriate. ▪ Has a cognitive, functional level that permits safe operation of a power mobility device with or without training. ▪ Has visual acuity that permits safe operation of a power mobility device. ▪ For a three-wheeled power mobility device, has sufficient trunk control and balance.

Here, Respondent denied the prior authorization request in this case pursuant to the above policies and on the basis that Petitioner failed to meet the applicable criteria outlined in the MPM, and adopted by Respondent, for approval of a three-wheeled power mobility device. In particular, as provided in the notices of denial and testified to by Respondent's representative, Respondent found that Petitioner did not qualify because the submitted documentation failed to show that Petitioner lacks the ability to use other devices or that he will require use of the device for at least four hours throughout the day.

In response, Petitioner testified that Respondent does not live with him or know what he needs in his home. He also testified that he needs the device in order to go shopping because it is hard for him to walk long distances and not all stores have scooters. He

further testified that he could also use the device around his apartment because, while he walks now, it can be hard to do so.

Petitioner has the burden of proving by a preponderance of the evidence that Respondent erred in denying his authorization request. Moreover, the undersigned Administrative Law Judge is limited to reviewing Respondent's decision in light of the information that was available at the time the decision was made.

Given the above policies and evidence in this case, Petitioner has not met his burden of proof and Respondent's decision must therefore be affirmed. Respondent, as permitted by its contract and the MPM, has limited coverage of three-wheeled power mobility devices consistent with Medicaid limitations policies and Petitioner does not meet the required criteria in this case given that the policy expressly requires that a beneficiary require use of the device for at least four hours throughout the day while the submitted documentation here states that the time Petitioner would spend on the device would be limited, with the only specific need for it identified as shopping. Moreover, while Petitioner argues that Petitioner does not live with him or knows his needs, Respondent can only make its decision on the information provided to it and, regardless, even Petitioner's testimony failed to suggest that he needs a mobility device for at least four hours throughout the day.

To the extent Petitioner has additional or updated information regarding his need for a power mobility device, then he can always have a new request submitted in the future along with that additional information. With respect to the issue in this case however, Respondent'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 Respondent properly denied Petitioner's authorization request.

IT IS, THEREFORE, ORDERED that:

Respondent'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	Managed Care Plan Division CCC, 7th Floor Lansing, MI 48919
Petitioner	[redacted], MI
Community Health Rep	Upper Peninsula Health Plan 853 W. Washington St Marquette, MI 49855