



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

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Date Mailed: October 1, 2020  
MOAHR Docket No.: 20-005482  
Agency No.: ██████████  
Petitioner: ██████████

**ADMINISTRATIVE LAW JUDGE: Corey Arendt**

**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 September 29, 2020. ██████████, Petitioner's mother, appeared and testified on the minor Petitioner's behalf. Leigha Burghdoff, Appeals Review Officer, appeared on behalf of the Respondent Department of Health and Human Services (Department). Adam Schlaufman, Departmental Analyst, testified as a witness for the Department.

**Exhibits:**

Petitioner	None
Department	A – Hearing Summary

**ISSUE**

Did the Department properly deny Petitioner's request for a drive incontinence kit?

**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 Medicaid beneficiary born ██████████ 2011 who has been diagnosed with ATR-X syndrome and suffers from significant global developmental delays. (Exhibit A, page 8; Testimony.)
2. On July 21, 2020, the Department received from Airway Mobility & Rehab Equipment, a request for a Drive Spirit car seat system and attachments including a drive incontinence kit for Petitioner. (Exhibit A, pp 12-37; Testimony.)

3. The request indicated a drive incontinence kit was necessary because of Petitioner frequently overfilling his diaper. (Exhibit A, pp 19, 34; Testimony.)
4. The request did not indicate a medical reason for the frequent filling of diapers or identify less economical options that have been tried and failed. (Exhibit A, pp 12-37; Testimony.)
5. On July 28, 2020, the Department sent Petitioner a Notification of Denial. The notice indicated the drive incontinence kit was being denied as the documentation provided did not support the medical necessity for the requested item. (Exhibit A, pp 10-11; Testimony.)
6. On August 31, 2020, the Michigan Office of Administrative Hearings and Rules, received from Petitioner, a request for hearing. (Exhibit A, pp 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 statute, the Social Welfare Act, the Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

The Medicaid Provider Manual (MPM) provides, in pertinent part, as follows:

#### **SECTION 1 – PROGRAM OVERVIEW**

This chapter applies to Medical Suppliers/Durable Medical Equipment and Orthotists/Prosthetists.

The primary objective of the Medicaid Program is to ensure that medically necessary services are made available to those who would not otherwise have the financial resources to purchase them.

The primary objective of the Children's Special Health Care Services (CSHCS) Program is to ensure that CSHCS beneficiaries receive medically necessary services that relate to the CSHCS qualifying diagnosis.

This chapter describes policy coverage for the Medicaid Fee-for-Service (FFS) population and the CSHCS population. Throughout the chapter, use of the terms Medicaid and Michigan Department of Health and Human Services (MDHHS) includes both the Medicaid and CSHCS Programs unless otherwise noted.

**Medicaid covers the least costly alternative that meets the beneficiary's medical need for medical supplies, durable medical equipment or orthotics/prosthetics.**

\* \* \* \*

## **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, 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, 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 MDCH 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 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, and clinical documentation from the medical record supports the medical necessity for the request (as described above) and substantiates the physician's order.
- The service/device meets the standards of coverage published by MDCH.
- 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.<sup>1</sup>

\* \* \* \*

In the present case, the Department determined that the PA request should be denied because medical necessity for a drive incontinence cover kit was not substantiated. The Department witness specifically indicated that the provided documentation did not document or identify a medical reason as to why the Petitioner was frequently overfilling his diapers or demonstrate less costly alternatives being tried<sup>2</sup>.

The Petitioner's Representative argued the Petitioner suffered from ATRX syndrome and that current planning has Petitioner eating about an hour prior to trips resulting in frequent overfilling of diapers. Petitioner also indicated that the seat itself is large and will be hard to remove to clean every time Petitioner overfills his diapers.

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<sup>1</sup> MPM, Medical Supplier Chapter, July 1, 2020, pp 1, 9-10.

<sup>2</sup> Example provided was manually cleaning the car seat or using special pads.

The arguments provided by Petitioner appear to be centered around convenience and do not demonstrate a specific medical reason as to why Petitioner is overfilling his diapers.

Based on the documentation submitted, Petitioner did not meet the Medicaid standards of coverage and documentation requirements to establish medical necessity for the request. Accordingly, the Department's denial must be upheld.

### **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 drive incontinence kit.

**IT IS, THEREFORE, ORDERED** that:

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

CA/dh



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**Corey Arendt**  
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**

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400 S. Pine, 6th Floor  
PO Box 30479  
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**DHHS Department Rep.**

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**Agency Representative**

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**Petitioner**

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