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Date Mailed: January 15, 2021
MOAHR Docket No.: 20-007490
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 14, 2021. Petitioner appeared and testified on his own behalf. Leigha Burghdoff, 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 offered one evidence packet/exhibit that was admitted into the record as Exhibit A, pages 1-38. Petitioner did not offer any exhibits.

ISSUE

Did the Department properly deny Petitioner's prior authorization request for a left knee ankle foot orthosis?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. On October 29, 2020, the Department received a prior authorization request for a left knee ankle foot orthosis submitted on Petitioner's behalf by Superior Prosthetics and Orthotics LLC. (Exhibit A, pages 12-36).

2. Two previous prior authorization requests from the same provider had already been denied on the basis that the provider had failed to identify the brand model, product or part number and appropriate HCPCS code on the prior authorization form. (Testimony of Departmental Analyst).

3. For the October 29, 2020 request, the provider wrote "Custom Fabricated Device" in the sections of the form asking for the brand name, model catalog or part number, including with respect to joint devices that cannot be made in-house. (Exhibit A, pages 12-17; Testimony of Departmental Analyst)

4. On November 12, 2020, the Department sent Petitioner written notice that the request had been denied. (Exhibit A, pages 9-11).

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

> The policy this denial is based on is Section 1.8.A of the Medical Supplier chapter of the Medicaid Provider Manual. Specifically:
>
> - 1.8.A. PRIOR AUTHORIZATION FORM: The provider must use the specific HCPCS code and the code description. A NOC code may not be used unless the use of a NOC code for the item has been approved by the PDAC. The brand, model, product or part number must be stated on the MSA-1653-B with the appropriate HCPCS code and description. The prescription and medical documentation must be submitted with the request.

Exhibit A, pages 8-9

6. On December 9, 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, pages 5-8).

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.A. PRIOR AUTHORIZATION FORM**
>
> Requests for PA must be submitted on the Special Services Prior Approval- Request/Authorization form (MSA-1653-B) or, for mobility and custom seating items, submit the Complex Seating and Mobility Device Prior Approval-Request/Authorization form (MSA-1653-D). (Refer to the Forms Appendix for a copy of the PA form and completion instructions.) In addition, the medical documentation specific to each type of device requested must accompany the form. The information on the PA request form must be:
>
> - Typed – All information must be clearly typed in the designated boxes of the form.
>
> - Complete – The provider must use the specific HCPCS code and the code description. A NOC code may not be used unless the use of a NOC code for the item has been approved by the PDAC. ***The brand, model, product or part number must be stated on MSA-1653-B or MSA-1653-D with the appropriate HCPCS code and description.*** The prescription and medical documentation must be submitted with the request. (Refer to the Coverage Conditions and Requirements section of this chapter for additional information regarding standards of coverage and payment rule requirements.)

> PA request forms and attached documentation may be mailed or faxed to the MDHHS Program Review Division. (Refer to Directory Appendix for contact information.)
>
> Instructions for the electronic submission of PA requests and the HIPAA 278 transaction code set are available on the MDHHS website. (Refer to the Directory Appendix for website information.)
>
> *MPM, October 1, 2020 version*
> *Medical Supplier Chapter, pages 13-14*
> *(emphasis added by ALJ)*

Here, the Department's witness testified that Petitioner's prior authorization request for a left knee ankle foot orthosis was denied pursuant to the above policy. Specifically, she noted that the request was denied because the provider failed to identify the brand model, product or part number and appropriate HCPCS code on the prior authorization form as expressly required by policy. She also testified, as an example, that the provider repeatedly indicated that joint devices were custom fabricated devices, rather than identifying any brand name, model catalog or part number, despite the fact that such devices cannot be made in-house. She further testified that it was the provider's third failed attempt to submit a proper request form, but that she was willing to reach out to them again if Petitioner wished and explain what was needed.

In response, Petitioner testified that he needs the requested items as he falls down a lot currently. He further testified that he would look into getting the appropriate paperwork submitted, but that he also would appreciate the Departmental Analyst reaching out to the provider as well.

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 Department's decision in light of the information available at the time the decision was made.

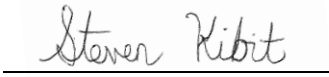
Given the record and applicable policy in this case, Petitioner has failed to meet his burden of proof and the Department's decision must be affirmed. The above policy expressly states that the brand, model, product or part number must be stated on the prior authorization form with the appropriate HCPCS code and description, and the Department's witness credibly and fully testified as to how the prior authorization form in this case failed to meet that requirement. Moreover, her testimony was not contradicted by Petitioner or any evidence, and, whether Petitioner and his provider are able to submit a proper request in the future, the decision at issue in this case must be affirmed.

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.**



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
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