[redacted]
[redacted], MI [redacted]

Date Mailed: February 11, 2022
MOAHR Docket No.: 21-006096
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 a request for hearing filed by Petitioner.

After due notice, a telephone hearing was held on February 2, 2022. [redacted] and [redacted], Petitioner's parents, appeared and testified on the minor Petitioner's behalf. Theresa Root, Appeals Review Officer, represented the Respondent Michigan Department of Health and Human Services (DHHS or Department). Mellody London, Review 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 1-74. Petitioner did not submit any proposed exhibits

ISSUE

Did the Department properly deny Petitioner's prior authorization request for an enclosed bed system?

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 beneficiary who has been diagnosed with autism; disruptive behavior disorder; sleep disturbance; sensory processing disorder; and a cognitive impairment. (Exhibit A, pages 10-11).

2. On July 26, 2021, the Department received a prior authorization request for a Cubby Bundled Bed submitted on Petitioner's behalf. (Exhibit A, page 36).

3. On July 28, 2021, the Department sent Petitioner's provider a request for additional information. (Exhibit A, pages 36-37).

4. In that request, the Department asked the provider to address the following:

> - What is the beneficiary currently sleeping in and why is it not appropriate at this time?
>
> - What economic alternatives (products and/or safety methods) have actually been tried and ruled out (i.e. standard bed with rails, bumper pads, mattress on the floor, hospital bed with padded side rails, other enclosed beds, etc.) Please explain why a less costly alternative will not meet the beneficiary's needs.
>
> - Enclosed bed systems are not covered when the purpose is to restrain the beneficiary due to behavioral conditions, caregiver need or convenience, etc.
>
> - Has the beneficiary sustained any injuries due to current sleeping arrangements? If so, please explain.

Exhibit A, page 36

5. On October 7, 2021, the Department received a new request for the enclosed bed along with additional information from the medical supplier. (Exhibit A, page 65).

6. A Letter of Medical Necessity was again included along with that request and, in part, that letter stated:

> In regards to sleep, [Petitioner's] parents report that she currently requires another person with her in the bed in order to fall and remain asleep. This includes her mother, father, or one of three sisters. If the person with [Petitioner] leaves the bed, she will move throughout the house in order to find someone to sleep with. If the person next to her moves, she will rouse and often will remain awake for the rest of her night unless she is transferred to her mother's room in which she is given a 30 pound weighted blanket and mother will have to remain still in order to keep from waking her. Family reports they are currently getting up to

two “good” nights of sleep per week. [Petitioner] does not have a reported history of injury during the night as a family member is constantly providing monitoring during sleep hours. [Petitioner] does however have a history of self-injurious behaviors such as slapping her neck in addition to aggression towards family members including scratching and hitting when dysregulated. During occupational therapy sessions, [Petitioner] has been observed demonstrating impulsive behaviors such as getting up and running across room with lack of regard for surroundings. This appears consistent with both lack of safety awareness in additional to deficits in proprioceptive and vestibular awareness.

* * *

[Petitioner’s] mother reports the current strategy of placing a mattress on the floor for safety and cooler temperatures with a tent surrounding the bed to provide additional security through the night. This has not been successful in [Petitioner’s] ability to remain asleep or for her caregivers to receive adequate sleep as she is constantly seeking out close human contact to remain in a regulated state.

The Cubby Bed is anticipated to provide [Petitioner] with both the regulating sensory input that she needs to fall asleep and stay asleep in addition to the safety and security to prevent injury during the night if dysregulation occurs. Improving her sleep quality and therefore the sleep quality of her caregivers will allow her to receive the best care and the best change at achieving a regulated state during her wake hours to promote safety and overall wellness.

> Features of the Cubby Bed include:
>
> - A built in speaker to provide white noise and nature sounds to promote a calming environment and prevent external stimuli from rousing [Petitioner] from sleep.
>
> - A camera for [Petitioner's] caregivers to monitor her sleep and be alerted with noise or motion
>
> - Safety sheets which attach to the sidewalls to precent entrapment.
>
> - A padded canopy made or mesh and fabric with a hidden zipper enclosure to protect [Petitioner] from injury that could occur with wandering in the night along with eliminating external stimuli such as light and sound which may keep [Petitioner] from falling and staying asleep.
>
> Based on [Petitioner's unique needs regarding sleep preparation and participation in addition to the importance of having well-rested caregivers, it is strongly recommended that her environment be set up in the safest and most supportive way possible. While other beds may be similar to this, the combined features of the Cubby Bed provide the best opportunity for her to achieve a safe and restful sleep and therefore promoting her ability to function optimally during activities of daily living.
>
> *Exhibit A, pages 41-42*

7. The request also included a letter from Petitioner's doctor stating in part:

> [Petitioner] has been struggling with sleep for years now. She has tried and failed medications, Ataraz and Trazodone. She has increased sensory needs and self abuse, often making it difficult to settle to sleep. She wakes often and will walk the house, searching for food or her siblings. There is increased risk of

> elopement during the night town hours as family sleeps. It is imperative to keep [Petitioner] safe during these hours. She is an elopement risk. The canopy will help ensure her safety.
>
> [Petitioner's] behaviors are also increased at night. The bed will provide a safe space if she has a meltdown or self abusive behavior.
>
> Due to [Petitioner's sensory issues, any noise will wake her. The canopy will aid as a sound barrier. [Petitioner] is afraid of the dark and will seek another to sleep with. The soothing sounds and night light should help with her anxiety and aid her to sleep. Overall, thus bed is essential for the health and safety of this patient.

Exhibit A, page 53

8. The request further included notes from a medical appointment where the doctor wrote in part:

> Behavior is a struggle at night. At night, she will not stay alone. She will sleep in bed with her sister . . . Her younger sister sleeps on the top bunk in the same room. [Petitioner] wakes often during the night and will cry. She often wants to wake up and get something to eat or drink. The sisters are being kept awake because of her inability to sleep and they often have to help [Petitioner] find the toy she dropped. The hope is that the sensory bed will 1. Keep her safe. 2. Keep her belongings that she needs near her. 3. It has a nightlight. 4. Her activity and temperature can be monitored.
>
> * * *
>
> **Sleep disturbance**
>
> [Petitioner] has had worse sleep over the past 1.5 months. She has always required someone to be lying next to her to fall asleep. However, she has been consistently waking up at 2:00 and is awake for 2-2.5 hours. Parents are

> ready to move [Petitioner] to her own room away from her sisters and they are pursing a specialty bed (Cubby Safety Bed) that is enclosed, provides night light, and monitoring. We provided a letter stating how this will be beneficial to [Petitioner]. Discussed that in the meantime she can still be moved to her own room since she is disrupting her sisters' sleep. There may be a gradual process for parents sitting on the side of her bed as she falls asleep until you are standing at the doorway then eventually out if the room.

Exhibit A, pages 54, 59

9. On October 20, 2021, the Department sent Petitioner written notice that the prior authorization request had been denied. (Exhibit A, pages 65-69).

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

> The policy this denial is based on is Sections 1.6, 1.6.C., 1.6.D. and 2.12 of the Medical Supplier chapter of the Medicaid Provider Manual. Specifically:
>
> - Requested information not received in full to substantiate medical necessity. Standards of Coverage have not been met per Medical Supplier Chapter, Sections 1.6, 1.6.C, 1.6.D, and 2.12.
>
> - Enclosed bed systems are not covered when the purpose is to restrain the beneficiary due to behavioral conditions, caregiver need or convenience, etc.

Exhibit A, page 65

11. On December 27, 2021, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the complete request for hearing filed in this matter regarding that denial. (Exhibit A, pages 4-9).

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 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:

> **1.6 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, 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 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.

* * *

1.6.C. DOCUMENTATION

The Coverage Conditions and Requirements Section of this chapter specifies the documentation requirements for individual service areas. Additional information other than what is required on the prescription may be required. To provide this information, Medicaid accepts a certificate of medical necessity (CMNs will be mandatory for electronic PA), a letter or a copy of applicable medical record. The prescribing physician must sign all documentation and the documentation (if a letter or applicable medical records) must state the beneficiary's name, DOB and ID number (if known) or SSN (if known).

1.6.D. CERTIFICATE OF MEDICAL NECESSITY REQUIREMENTS

A CMN must contain all of the following:

- Beneficiary's name and address;
- Beneficiary's date of birth (DOB);
- Beneficiary ID number (if initiated by the provider) or

SSN;

- Prescribing physician's signature, date of signature, telephone number;
- The suppliers' name and address;
- The expected start date of the service (if different from the prescription date);
- A complete description of the item;
- The amount and length of time the item is needed;
- Beneficiary's diagnosis; and
- The medical necessity of the item.

For specifics, refer to the Coverage Conditions and Requirements section and the Face-to-Face (F2F) Visit Requirements subsection of this chapter.

MDHHS will accept a CMN initiated by a medical supplier, orthotist or prosthetist. However, only the beneficiary identifier fields and the areas detailing the description of the item with applicable HCPCS procedure codes are to be completed by the provider. The physician must complete the CMN by writing the medical reason or necessity for the specific item being requested. A medical supplier, orthotist, or prosthetist may not alter or write the medical reason or necessity for the item requested.

Additional documentation (including the CMN) must be current and within the timeframe stated in the Coverage Conditions and Requirements Section of this chapter, under Documentation for each item.

* * *

2.12 ENCLOSED BED SYSTEMS

Definition	An Enclosed Bed System includes the mattress, bed frame, and enclosure as one unit.
Standards of Coverage	An Enclosed Bed System may be covered if the following applies:

	▪ There is a diagnosis/medical condition (e.g., seizure activity) which could result in injury in a standard bed, crib, or hospital bed; and ▪ There are no economic alternatives to adequately meet the beneficiary's needs.
Documentation	The documentation must be less than six months old and include: ▪ Diagnosis/medical condition requiring use of the bed and any special features (if applicable). ▪ Safety issues resulting from the medical condition and related to the need for an Enclosed Bed System. ▪ Other products or safety methods already tried without success (e.g., bumper pads/rails). ▪ Type of bed requested. ▪ Type of special features requested, if applicable.
Noncovered Conditions	Enclosed Bed Systems are not covered when the purpose is to restrain the beneficiary due to behavioral conditions, caregiver need or convenience, etc.
PA Requirements	PA is required for all Enclosed Bed Systems.
Payment Rules	The Enclosed Bed System is considered a **purchase only** item. For Youth Beds, refer to the Hospital Beds subsection of this chapter.

MPM, October 1, 2021 version
Medical Supplier Chapter, pages 9-10, 12-13, 46-47

Here, the Department's witness testified that Petitioner's prior authorization request was denied pursuant to the above policies.

Specifically, she testified that, as reflected in the submitted documentation, Petitioner's diagnoses were more behavioral than medical for this case and this kind of bed, with discussion of Petitioner's elopement risk, meltdowns, and self-abusive behaviors. She also testified why those behavioral concerns do not satisfy the applicable policies and how there is nothing in the request related to potential injuries in standard beds as required. She further testified that enclosed bed systems are approved to prevent entrapment, not to restrain a beneficiary in one particular area, and that there is an extremely small risk of entrapment here.

The Department's witness also testified that she consulted with a physician reviewer who similarly found that the request should be denied on the basis that enclosed bed systems are approved to stop entrapment, which is not present in this case, and not to restrain beneficiaries.

In response, Petitioner's parents testified that Petitioner's medications have been adjusted and the family has changed their habits, but that Petitioner still needs help falling asleep. They also testified that Petitioner cannot function during the day without sleep and that the requested equipment has been approved by the FDA. They further testified that the requested bed system is not to entrap or restrain Petitioner, and, instead, will provide her with stimuli to help her sleep while being monitored.

Petitioner's mother also read excerpts from the letters submitted along with the prior authorization request, while both parents testified regarding the purpose of each extra feature in the bed system. Petitioner's father further reiterated that the main function of the bed is to offer Petitioner a calm environment to fall and stay asleep, and not to restrain her to her bed or keep her hunkered down.

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 the 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 therefore be affirmed.

The above policies expressly provide that enclosed bed systems are not covered when the purpose is to restrain a beneficiary due to behavioral conditions, caregiver need or convenience, and that appears to be the primary purpose of the request in this case. The letter of medical necessity, letter from Petitioner's doctor and the office visit notes consistently highlight the need to prevent elopement, self-injurious behaviors, impulsive behaviors and meltdowns, all of which relate to behavioral concerns and cannot meet the criteria for approval.

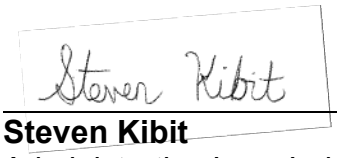
Moreover, to the extent Petitioner's parents' testimony focused on another reason for the requested enclosed bed system, *i.e.*, to assist Petitioner in falling and staying asleep, their testimony is still insufficient to meet Petitioner's burden of proof. The testimony itself is credible, as the submitted documentation similarly demonstrates that assisting Petitioner in falling and staying asleep was indeed another reason for requesting the enclosed bed. Nevertheless, even while true that other identified basis does not satisfy the applicable Standards of Coverage as enclosed bed systems are only covered where there is a diagnosis/medical condition, such as seizure activity, which could result in injury in a standard bed, crib, or hospital bed, and no such circumstances exist here.

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/tem

Steven Kibit
Administrative Law Judge

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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