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Date Mailed: June 9, 2022
MOAHR Docket No.: 22-001595
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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.*, upon Petitioner's request for a hearing.

After due notice, a hearing was held on June 8, 2022. [REDACTED], Petitioner's Mother, appeared and testified on Petitioner's behalf. Florence Scott-Emuakpor, Appeals Review Officer, appeared on behalf of Respondent, Michigan Department of Health and Human Services (MDHHS or Department). Lori Hinkle, State Administrative Manager, appeared as a witness for the Department.

ISSUE

Did the Department properly deny Petitioner's prior authorization request for a portable ventilator?

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, who has been diagnosed with myotonic dystrophy and chronic respiratory failure. (Exhibit A, p 12; Testimony.)
2. On or around March 14, 2022, the Department received a prior authorization request from Petitioner's provider requesting a home vent invasive interface (portable ventilator). The prior authorization order was signed by Dr. Rao, and dated September 1, 2021. (Exhibit A, pp 9-17; Testimony.)
3. The medical documentation submitted with the March 14, 2022, prior authorization request reflected Petitioner only used a ventilator at night and did not provide any medical reasons for a second ventilator during the

evening. (Exhibit A, pp 9-17; Testimony.)

4. On April 12, 2022, the Michigan Office of Administrative Hearings and Rules (MOAHR) received Petitioner's request for hearing. (Exhibit A, p 6; Testimony.)
5. On April 13, 2022, the Department sent Petitioner a Notification of Denial indicating that the prior authorization request for a portable ventilator was denied for failure to meet policy requirements found in Section 2.48 of the Medical Supplier chapter of the Medicaid Provider Manual (MPM). (Exhibit A, pp 7-8; Testimony.)

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). Regarding the specific request in this case, the applicable version of the MPM states in part:

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, 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.

* * *

2.48 VENTILATORS

Definition

A ventilator is a device designed to intermittently or continuously assist or control pulmonary ventilation.

- A negative pressure ventilator exerts negative (subatmospheric) pressure on the exterior chest wall.
- A positive pressure ventilator ventilates the lungs as the result of a positive pressure applied to the airway.

Standards of Coverage

Negative and positive pressure ventilators may be covered when there is a respiratory related diagnosis (e.g., neuromuscular disease, thoracic restrictive disease, chronic respiratory failure) and the beneficiary requires ventilator assistance.

Documentation

Documentation must be less than 90 days old and include the following:

- Respiratory diagnosis/medical condition related to the need for the ventilator.

- Type of ventilator ordered.
- Ventilator settings.
- Number of hours beneficiary is required to use the ventilator.

PA Requirements

PA is required for all ventilators.

Payment Rules

All ventilators are a **rental only** item and are inclusive of the following:

- All accessories needed to use the unit (e.g., circuits, water feed sets, adaptors, temperature probes, filters, heated or nonheated humidifier, oxygen analyzer, water or saline for humidifier, etc.).
- Education on the proper use and care of the equipment.
- Routine servicing and all necessary repairs or replacements to make the unit functional.

An additional ventilator may only be covered to allow a beneficiary access to the community. When billing more than one vent, the additional vent must be reported using a NOC code. A backup ventilator in case of a power failure is not separately reimbursable.¹

Here, the Department sent Petitioner written notice that the prior authorization request for a ventilator was denied on the basis that, the order itself was outside the 90-day window provided by policy, and because a second ventilator is not covered for nighttime use when one ventilator is currently available.

Petitioner's mother agreed the documentation was dated and lacked the medical necessity requirements for a second ventilator.

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

¹ Medicaid Provider Manual, Medical Supplier, April 1, 2022, pp 1, 9-10, 117-118.

Given the record and available information in this case, the undersigned Administrative Law Judge finds that Petitioner has failed to meet his burden of proof and that the Department's decision must therefore be affirmed. Based on the information provided, the Department properly determined the order itself was outside the 90-day period and the medical documentation provided lacked the medical necessity requirements. Petitioner is free to ask his provider to submit a new prior authorization request that meets the medical necessity requirements of Medicaid policy. However, based on the information available with the original request, the denial was proper.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly denied Petitioner's prior authorization request for a portable ventilator.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

CA/dh

J. Arendt
Corey Arendt
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

Via Electronic Mail:

DHHS Dept. Contact
Gretchen Backer
400 S. Pine, 6th Floor
P.O. Box 30479
Lansing, MI 48909
MDHHS-PRD-
Hearings@michigan.gov

DHHS Department Rep.
M. Carrier
MDHHS Appeals Section
P.O. Box 30807
Lansing, MI 48909
MDHHS-Appeals@michigan.gov

Authorized Hearing Rep.

Agency Representative
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P.O. Box 30807
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Via First Class Mail:

Petitioner

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