

GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
Date Mailed: November 10, 2022
MOAHR Docket No.: 22-003962
Agency No.: 1211351431
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

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 the Petitioner's request for a hearing.

After due notice, a telephone hearing was held on October 18, 2022. [REDACTED], Petitioner's mother, appeared and testified on Petitioner's behalf. Allison Pool, Appeals Review Officer, represented the Respondent Department of Health and Human Services (DHHS or Department). Adam Sloughman, an Analyst in the Program Review Division, 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 1-40. Petitioner did not offer any exhibits.

ISSUE

Did the Department properly deny Petitioner's prior authorization request for an activity chair?

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 four-year-old Medicaid beneficiary who has been diagnosed with, among other conditions, spastic quadriplegia CP, epilepsy, severe hypoxic ischemic encephalopathy. (Exhibit A, pages 13-20).
2. On July 27, 2022, the Department received a prior authorization request for an activity chair submitted on Petitioner's behalf. (Exhibit A, pages 12-30).

3. On August 17, 2022, the Department sent Petitioner written notice that the request for an activity chair had been denied. (Exhibit A, pages 10-11).
4. With respect to the reason for the denial, the notice stated:

The policy this denial is based on is Section 1.6, 1.11, and 2.6 of the Medical Supplier and chapters of the Medicaid Provider Manual. Specifically:

- MDHHS records show this beneficiary has been provided with a manual wheelchair with multiple positioning accessories in 2021. The documentation does not address or support the medical necessity to provide the requested floor sitter activity chair in addition to the wheelchair.
- Please refer to the Medical Supplier Chapter, Sections: 1.6, 1.11, and 2.6.

Exhibit A, page 10

5. On September 12, 2022, the Michigan Office Administrative Hearings and Rules (MOAHR) received the request for hearing filed in this matter regarding the Department's decision. The request states "Dr. Voss requests [REDACTED] to have an activity chair as well as a wheelchair. As of today, [REDACTED] has still not received either! For quality of life of a 4-year-old, playing on the floor is needed." (Exhibit A, page 6).
6. There was a delay in delivering Petitioner's previously approved wheelchair due to manufacturing delay, but that wheelchair was delivered after Petitioner's request for hearing and has no bearing on the issues addressed in this decision and order.

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.

*MPM, January 1, 2022 version
Medical Supplier Chapter, page 9
(italics added for emphasis)*

1.11 NONCOVERED ITEMS

Items that are not covered by Medicaid include, but are not limited to:

* * *

- Devices used for play, pre-mobility development or exercise are not considered pediatric mobility devices for the purpose of reimbursement and are not covered (e.g., jet mobile, ready racer, creepster crawler)

*MPM, January 1, 2022 version
Medical Supplier Chapter, page 25*

2.6 CHILDREN'S PRODUCTS

Definition Children's products that may be considered for coverage include, but are not limited to, equipment that is used in the home or vehicle by children under age 21 for the

purposes of positioning, safety during activities of daily living, or assisted mobility.

Examples of these items include: bath supports, specialized car seats, corner chairs, dynamic standers, feeder seats, gait trainers, pediatric walkers, positioning commodes, side lyers, standers, and toileting supports.

Standards of Coverage

Children's products are covered if one or more of the following applies:

- Beneficiary is unable to independently maintain a seated position.
- Beneficiary cannot stand and/or ambulate without the aid of an assistive device.
- Beneficiary has physical anomalies that require support to allow a functional position or prevent further disability.

Documentation

Documentation must be less than 180 days old and include all of the following:

- Diagnosis appropriate for the equipment requested.
- Any adaptive or assistive devices currently used in the home.
- Reason economic alternatives cannot be used, if applicable.
- Statement of functional need from an appropriate pediatric subspecialist, occupational or physical therapist.

PA Requirements PA is required for all requests.

Here, as discussed above, Petitioner's request for an activity chair was denied pursuant to the above policies and on the basis that Petitioner failed to establish medical necessity because the supporting documentation did not address or support the basis for a floor sitter activity chair in addition to the wheelchair.

In appealing the denial, 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 policy in this case, Petitioner has failed to meet her burden of proof and the Department's decision must be affirmed.

During the hearing, the Department's witness credibly and fully explained why the request was denied. In particular, she went through the documentation submitted and the applicable policy, detailing the reasons for the denial. Specifically, the denial was based on a lack of medical necessity because the supporting documentation did not address or support the basis for a floor sitter activity chair in addition to the wheelchair.

Petitioner's mother argued that she moved to a new home with a second floor and the current wheelchair does not allow access to the second floor for Petitioner and that the activity chair would. Petitioner's mother testified that Petitioner would be isolated to one room in the new home without the activity chair. Petitioner being isolated to one room in the home does not address a medical or functional need that is not addressed by her current wheelchair. With respect to the decision at issue in this case, the Department'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 the Department properly denied Petitioner's prior authorization request.

IT IS, THEREFORE, ORDERED that:

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

AM/vc


Aaron McClintic
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
Lansing, MI 48909
MDHHS-PRD-Hearings@michigan.gov

DHHS Department Representative

M. Carrier
Department Community Health
MDHHS
Lansing, MI 48909
MDHHS-Appeals@michigan.gov

Agency Representative

Allison Pool
Department of Community Health
MDHHS Appeals Section
Lansing, MI 48909
MDHHS-Appeals@michigan.gov

Via First Class Mail:

Authorized Hearing Representative

Laura Gomez
5739 Demorow Road
Stevensville, MI 49127

Petitioner

Rosemary Adams
5739 DeMorrow Road
Stevensville, MI 49127