



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
[REDACTED] MI [REDACTED]

Date Mailed: January 11, 2023  
MOAHR Docket No.: 22-005429  
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 upon Petitioner's request for a hearing.

After due notice, a telephone hearing was held on December 22, 2022. [REDACTED] [REDACTED] Petitioner's mother and legal guardian, appeared and testified on Petitioner's behalf. Jenna Ford, registered nurse (RN) and Clinical Coordinator, appeared and testified on behalf of Upper Peninsula Health Plan, the Respondent Medicaid Health Plan (MHP). Nicole Sandstrom, RN and Clinical Services Manager, also testified as a witness for Respondent.

During the hearing, Petitioner's request for hearing was admitted into the record as Exhibit #1. Respondent also submitted an evidence packet that was admitted into the record as Exhibit A.

### **ISSUE**

Did Respondent properly deny Petitioner's request for orthopedic footwear?

### **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 is enrolled in the Respondent MHP. (Exhibit A, pages 8, 10).
2. In 2019, Petitioner was approved for orthopedic footwear through Respondent. (Testimony of Petitioner's representative; Testimony of RN/Clinical Services Manager).
3. On October 5, 2022, Respondent received a prior authorization request

for orthopedic footwear submitted on Petitioner's behalf by her doctor. (Exhibit A, pages 8-16).

4. In that request, the doctor indicated that Petitioner had been diagnosed with metatarsalgia. (Exhibit A, page 9).
5. The doctor also included medical records along with the request, with a September 21, 2022, note from the durable medical equipment provider stating in part:

[Petitioner] presents with pain in her feet, more so in the right foot at the 1st digit. She has some cognitive deficits which made it a little difficult to truly know the extent of her pain. She does have flat feet and valgus ankle deformity. She tends to walk on her toes often which results in pain in her great toes. She has been wearing custom Fos, but they are more than 3 years old and worn beyond repair.

*Exhibit A, page 11*

6. An August 30, 2022, note from Petitioner's doctor's office also stated in part:

[Petitioner] is a [REDACTED] year old female here today for evaluation of a rash between her breasts and some pain over the metatarsal area of her right foot, She is usually cared for by Dr. Poulos . . . and she is here today with her mother [REDACTED] from whom some of the history is garnered. Still has a learning disability.

\* \* \*

She reports when she walks she has pain especially over area of her first toe. She denied any trauma or injury here. She has a history of custom orthotics in the past. Her mother believes it was because of a leg length discrepancy but she apparently has some pain walking in the past. Orthotics are at least 3 years old.

*Exhibit A, page 12*

7. On October 5, 2022, Respondent sent Petitioner written notice that the prior authorization request had been denied. (Exhibit A, pages 4-7).

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

The Michigan Department of Health and Human Services (MDHHS) Medicaid Provider Manual, 2.23 Orthopedic Footwear. These guidelines state that orthopedic shoes and inserts may be covered if any of the following applies:

- To meet needs for a different in leg length or foot size, or
- To meet needs for a partial foot prosthesis (artificial foot part), clubfoot (severe foot turned in), or plantar fasciitis (inflamed foot tendon), or
- To meet needs for a brace (extra depth only)

These guidelines also state that shoes and inserts are noncovered for the conditions of:

- Pes Planus or Talipes Planus (flat feet)
- Adductus metatarsus (front part of the foot turned inward)
- Calcaneus Valgus (rear part of the foot turned outward)
- Hallux Valgus (big toe bent outward)

None of these were found in the records sent. Inserts are not covered for flat feet.

*Exhibit A, page 4*

9. Petitioner subsequently filed an Internal Appeal with Respondent regarding that decision. (Exhibit A, page 19).

10. On November 2, 2022, Respondent sent Petitioner written notice that her Internal Appeal was denied. (Exhibit A, pages 22-25).

11. On November 14, 2022, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the request for hearing filed by Petitioner in this matter regarding Respondent's decision. (Exhibit #1, pages 1-2).

### **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.

In 1997, the Department received approval from the Health Care Financing Administration, U.S. Department of Health and Human Services, allowing Michigan to restrict Medicaid beneficiaries' choice to obtain medical services only from specified Medicaid Health Plans.

The Respondent is one of those MHPs and, as provided in the Medicaid Provider Manual (MPM), is responsible for providing covered services pursuant to its contract with the Department:

The Michigan Department of Health and Human Services (MDHHS) contracts with Medicaid Health Plans (MHPs), selected through a competitive bid process, to provide services to Medicaid beneficiaries. The selection process is described in a Request for Proposal (RFP) released by the Office of Purchasing, Michigan Department of Technology, Management & Budget. The MHP contract, referred to in this chapter as the Contract, specifies the beneficiaries to be served, scope of the benefits, and contract provisions with which the MHP must comply. Nothing in this chapter should be construed as requiring MHPs to cover services that are not included in the Contract. A copy of the MHP contract is available on the MDHHS website. (Refer to the Directory Appendix for website information.)

MHPs must operate consistently with all applicable published Medicaid coverage and limitation policies. (Refer to the General Information for Providers and the Beneficiary Eligibility chapters of this manual for additional information.) Although MHPs must provide the full range of covered services listed below, MHPs may also choose to provide services over and above those specified. MHPs are allowed to develop prior authorization requirements and utilization management and review criteria that differ from Medicaid requirements. The following subsections describe covered

services, excluded services, and prohibited services as set forth in the Contract.

*MPM, October 1, 2022 version  
Medicaid Health Plan Chapter, page 1  
(Underline added for emphasis)*

As allowed by the above policy and its contract with the Department, the MHP has developed prior authorization requirements and utilization management and review criteria; and has limited coverage to those consistent with all the Department's applicable published Medicaid coverage and limitation policies. In part, that policy provides:

### 2.23 ORTHOPEDIC FOOTWEAR

|                              |   |
|------------------------------|---|
| <b>Definition</b>            | Orthopedic footwear may include, but are not limited to, orthopedic shoes, surgical boots, removable inserts, Thomas heels, and lifts.  |
| <b>Standards of Coverage</b> | <p><b>Orthopedic shoes and inserts</b> may be covered if any of the following applies:</p> <ul style="list-style-type: none"> <li>▪ Required to accommodate a leg length discrepancy of ¼ inch or greater or a size discrepancy between both feet of one size or greater.</li> <li>▪ Required to accommodate needs related to a partial foot prosthesis, clubfoot, or plantar fasciitis.</li> <li>▪ Required to accommodate a brace (extra depth only are covered).</li> </ul> <p><b>Surgical Boots or Shoes</b> may be covered to facilitate healing following foot surgery, trauma or a fracture.</p> |
| <b>Noncovered Items</b>      | <p>Shoes and inserts are noncovered for the conditions of:</p> <ul style="list-style-type: none"> <li>▪ Pes Planus or Talipes Planus (flat foot)</li> <li>▪ Adductus metatarsus</li> <li>▪ Calcaneus Valgus</li> </ul>  |

|                        |   |
|------------------------|---|
|                        | <ul style="list-style-type: none"> <li>▪ Hallux Valgus</li> </ul> <p>Standard shoes are also noncovered.</p>  |
| <b>Documentation</b>   | <p>Documentation must be less than 60 days old and include the following:</p> <ul style="list-style-type: none"> <li>▪ Diagnosis/medical condition related to the service requested.</li> <li>▪ Medical reasons for specific shoe type and/or modification.</li> <li>▪ Functional need of the beneficiary.</li> <li>▪ Reason for replacement, such as growth or medical change.</li> </ul> <p><b>CSHCS requires</b> a prescription from an appropriate pediatric subspecialist.</p>   |
| <b>PA Requirements</b> | <p>PA is not required for the following items if the Standards of Coverage are met:</p> <ul style="list-style-type: none"> <li>▪ Surgical boots or shoes.</li> <li>▪ Shoe modifications, such as lifts, heel wedges, or metatarsal bar wedges up to established quantity limits.</li> <li>▪ Orthopedic shoe to accommodate a brace.</li> <li>▪ Orthopedic shoes and inserts when the following medical conditions are present: <ul style="list-style-type: none"> <li>➤ Plantar Fascial Fibromatosis</li> <li>➤ Unequal Leg Length (Acquired)</li> <li>➤ Talipes Equinovarus (Clubfoot)</li> <li>➤ Longitudinal Deficiency of Lower Limb, Not Elsewhere Classified</li> <li>➤ Unilateral, without Mention of</li> </ul> </li> </ul> |

|                      |  |
|----------------------|--|
|                      | <p>Complication (Partial Foot Amputation)</p> <ul style="list-style-type: none"> <li>➤ Unilateral, Complicated (Partial Foot Amputation)</li> <li>➤ Bilateral, without Mention of Complication (Partial Foot Amputation)</li> <li>➤ Bilateral, Complicated (Partial Foot Amputation)</li> </ul> <hr/> <p>PA is required for:</p> <ul style="list-style-type: none"> <li>▪ All other medical conditions related to the need for orthopedic shoes and inserts not listed above.</li> <li>▪ All orthopedic shoes and inserts if established quantity limits are exceeded.</li> <li>▪ Medical need beyond the Standards of Care.</li> <li>▪ Beneficiaries under the age of 21, replacement within six months.</li> <li>▪ Beneficiaries over the age of 21, replacement within one year.</li> </ul> |
| <b>Payment Rules</b> | These are <b>purchase only</b> items   |

*MPM, October 1, 2022 version  
Medicaid Health Plan Chapter, pages 68-69*

Here, Respondent denied Petitioner’s request for orthopedic footwear pursuant to that policy and on the basis that the documentation submitted, including Petitioner’s medical records, failed to demonstrate that Petitioner met the applicable criteria.

In appealing that decision, Petitioner has the burden of proving by a preponderance of the evidence that Respondent erred in denying her authorization request. Moreover, the undersigned Administrative Law Judge is limited to reviewing Respondent’s decision in light of the information that was available at the time the decision was made.

Given the above policy and evidence in this case, Petitioner has failed to satisfy her burden of proof and Respondent's decision must be affirmed.

Petitioner was previously approved for orthopedic footwear through Respondent, but that alone does not establish that she currently meets the applicable criteria and there is nothing in the record reflecting why the orthopedic footwear was previously approved, what guidelines were in place at the time, and how the past approval has any bearing in this case.

Similarly, the medical records submitted along with Petitioner's prior authorization fail to establish that she meets the applicable standards of coverage. At most, Petitioner's doctor alluded to a report from Petitioner's mother that Petitioner has a leg length discrepancy and, while that could be the basis for an approval, Petitioner's mother's report, and her testimony during the hearing, is not supported by any evidence and was not the identified grounds for the request in this case.

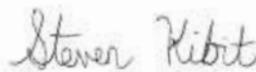
To the extent Petitioner has additional or updated information to provide, she and her doctor can always submit a new authorization request with that additional or updated information. With respect to the issue in this case; however, Respondent's decision must be affirmed given the available information and applicable policy.

#### **DECISION AND ORDER**

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, decides that Respondent properly denied Petitioner's prior authorization request.

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

Respondent's decision is **AFFIRMED**.



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**Steven Kibit**  
Administrative Law Judge

SK/sj

**NOTICE OF APPEAL:**

Petitioner 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 Department Contact**  
CCC, 7th Floor  
Lansing, MI 48919  
**MDHHS-MCPD@michigan.gov**

**Community Health Representative**  
Nicole Sandstrom RN  
Clinical Services Manager  
Upper Peninsula Health Plan  
853 W. Washington St  
Marquette, MI 49855  
**Nsandstrom@uphp.com**

**Via First Class Mail:**

**Authorized Hearing Representative**

[REDACTED]  
[REDACTED] MI [REDACTED]

**Petitioner**

[REDACTED]  
[REDACTED] MI [REDACTED]

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