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Date Mailed: April 12, 2023
MOAHR Docket No.: 23-001111
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 March 29, 2023. [redacted] the minor Petitioner's mother, appeared and testified on Petitioner's behalf. Florence Scott-Emuakpor, Appeals Review Officer, represented the Respondent Department of Health and Human Services (DHHS or Department). Adam Schlaufman, Analyst, testified as a witness for the Department.

During the telephone hearing, the Department offered an evidence packet that was admitted into the record as Exhibit A, pages 1-39. No other proposed exhibits were submitted.

ISSUE

Did the Department properly deny Petitioner's prior authorization request for hi/low 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 [redacted] year-old Medicaid beneficiary who has been diagnosed with hypotonia and epileptic encephalopathy. (Exhibit A, pages 11-12).

2. Due to his diagnoses, Petitioner presents with decreased trunk control contributing to poor static and dynamic sitting, and he is unable to sit independently without losing balance. (Exhibit A, page 12).

3. Petitioner is also totally dependent on his caregivers for transferring. (Exhibit A, page 16; Testimony of Petitioner's representative; Testimony of Utilization Analyst).

4. On January 11, 2023, the Department received a prior authorization request for a hi/low activity chair with accessories submitted on Petitioner's behalf. (Exhibit A, pages 9-21).

5. With respect to the medical necessity of the hi/low capabilities of the activity chair, the documentation submitted along with the prior authorization request stated:

> The hi/low assist allows for safe and independent sitting. Hi/Lo base enables [Petitioner] to be lowered to improve caregiver safety for assist with transfers in and out of the chair. Hi/Lo base enables user to be raised to practice self-feeding and table activity skills at the same level as family and peers. Positioning close to an adult is necessary for adult monitoring and assistance for user to improve related task function safely while seated.
>
> *Exhibit A, page 13*

6. On January 26, 2023, the Department sent Petitioner written notice that the request for a hi-low activity chair and accessories had been denied. (Exhibit A, pages 7-8).

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

> The policy this denial is based on is Sections 1.6, 1.11, 2.6 and 2.47 of the Medical Supplier chapter of the Medicaid Provider Manual. Specifically:
>
> - The documentation submitted does not support the medical need or meet the coverage requirements for the requested Hi/Low activity chair for a beneficiary who is documented as being a total caregiver lift for transfers. Equipment requested for play, social, or recreational activities is not covered. A pediatric hi/low chair may be covered if it is required to allow for independent transfers.
>
> - The provider is welcome to submit for a static height activity chair for consideration.

- Refer to the Medical Supplier chapter sections: 1.6, 1.11, 2.6, and 2.47.

Exhibit A, pages 7-8

8. On March 1, 2023, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the request for hearing filed in this matter regarding the Department's decision. (Exhibit A, page 6).

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, with respect to medical supplies, the applicable version of the MPM states in part:

> **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.

MPM, January 1, 2023 version
Medical Supplier Chapter, pages 9-10

1.11 NONCOVERED ITEMS

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

- Adaptive equipment (e.g., rocker knife, swivel spoon, etc.)

- Air conditioner
- Air purifier
- Custom seating for secondary and/or transport chairs
- 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)
- Enteral formula to accommodate psychological or behavioral conditions, food preferences, allergies, loss of appetite, or noncompliance with a specialized diet
- Environmental Control Units
- Equipment not used or not used properly by the beneficiary
- Equipment for social or recreational purposes
- Exam tables/massage tables
- Exercise equipment (e.g., tricycles, exercise bikes, weights, mat/mat tables, etc.)
- Generators
- Hand/body wash
- Heating pads
- Home modifications
- Hot tubs
- House/room humidifier
- Ice packs
- Items for a beneficiary who is non-compliant with a physician's plan of care (or) items ordered for the purpose of solving problems related to noncompliance (e.g., insulin pump)

- Items that are not defined by the American Medical Association (AMA), the Food and Drug Administration (FDA), and the Pricing, Data Analysis, and Coding (PDAC) contractor as medical devices or dedicated durable medical equipment (e.g., personal tablets, computers, iPads, iPhones, Smart devices, etc.)

- Items used solely for the purpose of restraining the beneficiary for behavioral or other reasons

- Lift chairs, reclining chairs, vibrating chairs

- More than one pair of shoes on the same date of service

- New equipment when current equipment can be modified to accommodate growth

- Nutritional puddings/bars

- Over-the-counter shoe inserts

- Padded footplates

- Peri-wash

- Portable oxygen, when oxygen is ordered to be used at night only

- Power tilt-in-space or reclining wheelchairs for a long-term care resident because there is limited staffing

- Pressure gradient garments for maternity-related edema

- Prosthetic appliances for a beneficiary with a potential functional level of K0

- Regular or dietetic foods (e.g., Slimfast, Carnation instant breakfast, etc.)

- Room dehumidifiers

- School Items (e.g., computers, writing aids, book holder, mouse emulator, etc.)

- Second units for school use
- Second wheelchair for beneficiary preference or convenience
- Sensory Devices (e.g., games, toys, etc.)
- Sports drinks/juices
- Stair lifts
- Standard infant/toddler formula
- Therapy modalities (bolsters, physio-rolls, therapy balls, jett mobile)
- Toothettes
- Transcutaneous Nerve Stimulator when prescribed for headaches, visceral abdominal pain, pelvic pain, or temporal mandibular joint (TMJ) pain
- UV lighting for Seasonal Affective Disorder
- Vacu-brush toothbrushes
- Weight loss or "light" products
- Wheelchair lifts or ramps for home or vehicle (all types)
- Wheelchair accessories (e.g., horns, lights, bags, special colors, etc.)
- Wigs for hair loss

For specific procedure codes that are not covered, refer to the Coverage Conditions and Requirements Section of this chapter or the Additional Code/Coverage Resource Materials subsection of the General Information for Providers Chapter for additional information.

MPM, January 1, 2023 version
Medical Supplier Chapter, pages 25-27

2.6 CHILDREN'S PRODUCT

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.
Payment Rules	All children's products are considered purchase only items.

MPM, January 1, 2023 version
Medical Supplier Chapter, page 37

2.47 WHEELCHAIRS, PEDIATRIC MOBILITY AND POSITIONING MEDICAL DEVICES, AND SEATING SYSTEMS

* * *

Pediatric Mobility Devices and Wheelchairs	May be covered if **all** of the following are met for each type of device. For CSHCS beneficiaries, a medical referral from an appropriate board-certified pediatric subspecialist or an Office of Medical Affairs (OMA)-approved physician is required. MDHHS also reserves the right to require a medical referral from an appropriate board certified pediatric subspecialist for Medicaid beneficiaries. For manual pediatric wheelchairs: ▪ Has a diagnosis/medical condition that indicates a lack of functional ambulatory status with or without an assistive medical device or has a willing and able caregiver to push the chair **and** the wheelchair is required in a community residential setting. ▪ Is required for long-term use (greater than 10 months). ▪ Must accommodate growth and adjustments for seating systems a

	minimum of 3" in depth and 2" in width. ▪ Is designed to be transportable. ▪ Is the most economical alternative available to meet the beneficiary's mobility needs. **For power wheelchairs:** ▪ Lacks ability to propel a manual wheelchair, or has a medical condition that would be compromised by propelling a manual wheelchair, for at least 60 feet over hard, smooth, or carpeted surfaces (this includes the need to rest at intervals). ▪ Is able to safely control the wheelchair through doorways and over thresholds up to 1½". ▪ Has a cognitive, functional level that is adequate for power wheelchair mobility. ▪ Has visual acuity that permits safe operation of a power mobility device. ▪ Must accommodate growth and adjustments for custom-fabricated seating systems a minimum of 3" in depth and 2" in width. ▪ For a three-wheeled power mobility device, has sufficient trunk control and balance. **For transport mobility medical devices (e.g., strollers):** ▪ Is over three years of age or has a medical condition that cannot be

	accommodated by commercial products. ▪ Will be the primary mobility device due to inability to self-propel a manual wheelchair or operate a power wheelchair. ▪ Is required as a transport device when the primary wheelchair cannot be designed to be transportable. ▪ Must accommodate growth and adjustments for seating systems a minimum of 3" in depth and 2" in width. ▪ Is the most economical alternative available to meet the beneficiary's mobility needs. ▪ Is required for use in the community residential setting. **For pediatric standing systems with or without wheels:** ▪ Is able to utilize the product without being compromised medically or functionally. ▪ Has a plan of care that documents how the standing system will be used in the community residential setting. ▪ Documentation addresses economic alternatives, including dynamic vs. non-dynamic factors. ▪ Other economic alternatives have been ineffective. ▪ Must accommodate growth and adjustments for seating systems a

	minimum of 3" in depth and 2" in width. For CSHCS beneficiaries, a medical referral from an appropriate board-certified pediatric subspecialist or an Office of Medical Affairs (OMA)-approved physician is required. MDHHS also reserves the right to require a medical referral from an appropriate board-certified pediatric subspecialist for Medicaid beneficiaries. **For pediatric hi/low chairs:** ▪ Positioning cannot be accommodated by use of other mobility devices or commercial products. ▪ Is required for independent transfers. ▪ All mobility products with interchangeable bases and seating systems have been ruled out as economic alternatives. ▪ Must accommodate growth and adjustments for seating systems a minimum of 3" in depth and 2" in width.

MPM, January 1, 2023 version
Medical Supplier Chapter, pages 109-110

Here, as discussed above, Respondent denied Petitioner's request for a hi/low activity chair and accessories pursuant to the above policies.

In appealing the denial, 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 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 his burden of proof and the Department's decision must be affirmed.

As provided in the above policies, children's products like the one sought in this case are covered if a beneficiary is unable to independently maintain a seated position; the beneficiary cannot stand and/or ambulate without the aid of an assistive device; or the beneficiary has physical anomalies that require support to allow a functional position or prevent further disability.

However, while such criteria may have been met in this case with respect to an activity chair, and the Department indicated a willingness to approve a static height activity chair, that was not what was sought in this case, as Petitioner requested a hi/low activity chair with the ability to automatically move the chair up and down, and Petitioner must therefore also demonstrate medical necessity for the hi/low aspect of the requested activity chair.

For pediatric hi/low chairs, the above policy expressly requires that, among other things, that the chair "[i]s required for independent transfers" and it is undisputed in this case that Petitioner cannot independently transfer and is totally dependent on his caregivers for all transferring, with the hi/low function instead being requested to assist the caregivers of varying size in transferring Petitioner in-and-out and better utilizing the chair. Accordingly, even accepting the letter of medical necessity and Petitioner's representative's testimony as accurate, Petitioner still does not meet the criteria for a hi/low chair.

Moreover, while Petitioner's mother questioned why a child with more severe disabilities, who cannot independently transfer, would be denied a product that a child with less severe disabilities, and who can transfer independently, would be approved; that question is ultimately irrelevant as the Department, and the undersigned Administrative Law Judge, are bound by the applicable and clear policy. Additionally, the Department's witness did credibly testify that approval of the pediatric hi/low chairs is not based on the severity of a disability, but instead on medical needs and the specific functions of the requested chair.

As discussed during the hearing, Petitioner is free to have a request for a static height activity chair submitted in the future. However, the request in this case for a hi/low activity chair was properly denied and must be affirmed given the record 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.**

Steven Kibit
Administrative Law Judge

SK/sj

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).

PROOF OF SERVICE

I certify that I served a copy of the foregoing document upon all parties, to their last-known addresses in the manner specified below, this 12th day of April 2023.

S. James
S. James
Michigan Office of Administrative Hearings and Rules

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