



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: May 15, 2023
MOAHR Docket No.: 23-001367
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 May 10, 2023. [REDACTED] Petitioner's mother, appeared and testified on Petitioner's behalf.

Leigha Burghdoff, Appeals Review Officer, represented Respondent, Michigan Department of Health and Human Services (MDHHS or Department). Allyson Byrtle, and Dr. James Mitchner, appeared as witnesses for the Department.

ISSUE

Did the Department properly deny Petitioner's prior authorization request for an enteral formula?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. On February 24, 2023, the Department received a prior authorization request for specialty formula for Petitioner. (Exhibit A; Testimony.)
2. The records provided with the prior authorization request indicated Petitioner measured [REDACTED] feet [REDACTED] inches tall and had a weight of [REDACTED] pounds placing Petitioner's BMI in the [REDACTED] percentile. The prior authorization request also indicated Petitioner had a diagnosis of autism, global developmental delay, and oral aversion. (Exhibit A; Testimony.)

3. On February 28, 2023, the Department sent Petitioner a Notification of Denial. (Exhibit A; Testimony.)
4. On March 17, 2023, the Michigan Office of Administrative Hearings and Rules received from Petitioner, a request for hearing. (Exhibit A.)
5. On March 31, 2023, iMPROve Health requested a pediatric physician review. (Exhibit A; Testimony.)
6. The physician reviewer indicated the patient had a diagnosis of Autism with Developmental Delay. The reviewer indicated the documentation provided did not contain a medical diagnosis of dysphagia or cognitive delay interfering with an ability to eat and did not indicate Petitioner as having tried and failed occupational therapy aimed at working on eating and swallowing. (Exhibit A; 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.

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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, 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 MDCH 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.

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.)
- ...
- **Enteral formula to accommodate psychological or behavioral conditions, food preferences, allergies, loss of appetite, or noncompliance with a specialized diet.**
- 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.

2.13.A ENTERAL NUTRITION (ADMINISTERED ORALLY)

Standards of Coverage	Enteral nutrition (administered orally) may be covered for beneficiaries under the age of 21 when: <ul style="list-style-type: none">• A chronic medical condition exists resulting in nutritional deficiencies, and a three-month trial is required to prevent gastric tube placement; or• Supplementation to regular diet or meal replacement is required, and the beneficiary's weight-to-height ratio has fallen below the fifth percentile on standard growth charts; or• Physician documentation details low
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	<p>percentage increase in growth pattern or trend directly related to the nutritional intake and associated diagnosis/medical condition.</p> <p>For CSHCS coverage, a nutritionist or appropriate pediatric subspecialist must indicate that long-term enteral supplementation is required to eliminate serious impact on growth and development.</p> <p>For Healthcare Common Procedure Coding System (HCPCS) code B4162, the beneficiary must have a specified inherited disease of metabolism identified by the International Classification of Diseases (ICD).</p> <p>For beneficiaries age 21 and over:</p> <ul style="list-style-type: none">• The beneficiary must have a medical condition that requires the unique composition of the formula nutrients that the beneficiary is unable to obtain from food; or• The nutritional composition of the formula represents an integral part of treatment of the specified diagnosis/medical condition; or• The beneficiary has experienced significant weight loss. <p>For Healthcare Common Procedure Coding System (HCPCS) code B4157, the beneficiary must have a specified inherited disease of metabolism identified by the International Classification of Diseases (ICD).</p>
Documentation	<p>Documentation must be less than 30 days old and include:</p> <ul style="list-style-type: none">• Specific diagnosis/medical condition related to the beneficiary's inability to take or eat food.

	<ul style="list-style-type: none">• Duration of need.• Amount of calories needed per day.• Current height and weight, as well as change over time. (For beneficiaries under 21, weight-to-height ratio.)• Specific prescription identifying levels of individual nutrient(s) that is required in increased or restricted amounts.• List of economic alternatives that have been tried. <p>For continued use beyond 3-6 months, the CSHCS Program requires a report from a nutritionist or appropriate pediatric subspecialist.</p>
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The Department's witnesses testified the Petitioner's request for enteral formula was denied as a result of the Petitioner not meeting the standards of coverage required for authorization. Specifically, the Department indicated the documentation provided does not indicate a medical diagnosis outside of Autism and further does not show Petitioner as having tried and failed Occupational Therapy. The Documentation provided does indicate the Petitioner currently sits in the [REDACTED] percentile for BMI and does not indicate any nutritional deficiencies.

Petitioner's mother disputed many of the findings presented but did not provide any documentation to corroborate her claims. Petitioner's mother indicated she would be working with Petitioner's treating providers to submit a new request.

Based on the evidence presented, the undersigned Administrative Law Judge finds that Petitioner has failed to prove, by a preponderance of the evidence, that the Department erred in denying the requested formula. The evidence presented does not indicate Petitioner has met the standards of coverage to be approved. Therefore, the Department's decision to deny the requested formula must be upheld.

DECISION AND ORDER

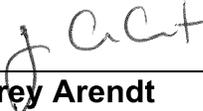
The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly denied Petitioner's prior authorization request for enteral formula.

¹ MPM, Medical Supplier Chapter, January 1, 2023, pp 9, 25-26, 49.

IT IS THEREFORE ORDERED THAT:

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

CA/pe



Corey Arendt
Administrative Law Judge
for Elizabeth Hertel, Director
Department of Health and Human Services

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 Department Contact

Gretchen Backer
MDHHS
Lansing, MI 48909
**MDHHS-PRD-
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Via First Class Mail:

Authorized Hearing Representative

[REDACTED]
MI [REDACTED]

Petitioner

[REDACTED]
MI [REDACTED]