[redacted]
[redacted] MI [redacted]

Date Mailed: August 22, 2023
MOAHR Docket No.: 23-003589
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 August 1, 2023. [redacted] Petitioner's mother, appeared and testified on Petitioner's behalf. John Lambert, Appeals Review Officer, represented the Respondent Department of Health and Human Services (DHHS or Department). Christine Wixtrom, 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 1-74. No other proposed exhibits were submitted.[1]

ISSUE

Did the Department properly deny Petitioner's prior authorization request for a power wheelchair and accessories?

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 hemiplegia, unspecified affecting left nondominant side; unspecified osteoarthritis; hyperlipidemia; and generalized muscle weakness. (Exhibit A, page 19).

[1] Petitioner's representative did file correspondence after the hearing was completed, but it was not accepted or reviewed as the record was closed.

2. She lives in a Long-Term Care (LTC) facility and uses a power wheelchair for mobility. (Exhibit A, page 34).

3. On April 20, 2023, the Department received a prior authorization request for a power wheelchair and accessories submitted on Petitioner's behalf by a medical supplier. (Exhibit A, page 7).

4. On April 25, 2023, the Department sent Petitioner's medical supplier a Request for Additional Information. (Exhibit A, pages 9-10).

5. Specifically, the request stated:

> In order to process this request, please address the following:
>
> - The submitted nursing notices dated 3/23/2023 document the beneficiary is unsafe in the electric wheelchair. Please explain and resubmit with therapist verification that a trial was completed with the requested power wheelchair and that the beneficiary was safely able to operate the requested power wheelchair and power seat functions independently.
>
> - The submitted nursing notes indicate a therapy referral dated 3/15/2023. Resubmit with current occupational therapy and physical therapy progress notes or most recent discharge summary.
>
> - The submitted nursing plan of care documents the beneficiary does not take responsibility for her won [sic] behaviors, is disruptive, impulsive, blocks other's movements with her wheelchair and requires frequent and consistent supervision with redirection. Several incidents of reckless driving are documented. Please verify the beneficiary is safe with the requested power wheelchair.

Exhibit A, page 9

6. On May 14, 2023, the Department received a new prior authorization request for a power wheelchair and accessories submitted on Petitioner's behalf by a medical supplier. (Exhibit A, page 7).

7. That second request included the same nursing notes and plan of care as the previous request, including a note expressly stating that Petitioner is "considered unsafe in electric wheelchair" and a plan of care identifying issues with Petitioner's behaviors, her improper use of her wheelchair, and her need for supervision. (Exhibit A, pages 82, 85, 87, 95, 117; Testimony of Analyst).

8. Moreover, while the physical therapist did appear to attest, in an undated and unsigned letter, that Petitioner is able to use a power wheelchair safely 95% of the time, the submitted letter also provided that Petitioner needs verbal cues regarding when to wait 15% of the time and about being cautious around close objects and residents 15% of the time. (Exhibit A, page 148).

9. On May 22, 2023, the Department sent Petitioner written notice that her request for a power wheelchair and accessories had been denied. (Exhibit A, pages 11-12).

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

> The policy this denial is based on is Sections 1.6, 1.8, 2.47 and 10.8 of the Medical Supplier and Nursing Facility Coverages chapters of the Medicaid Provider Manual. Specifically:
>
> - The required documentation was not submitted. Please refer to prior authorization 1000995074 for the required documentation.
>
> - The submitted attestation from the therapist indicated the beneficiary is not independent with the safe operation of the requested power wheelchair, requires verbal cues for the operation of the requested power wheelchair and does not meet the coverage conditions of a power wheelchair. Per section 2.47 of the Medical supplier chapter, the coverage of a power wheelchair requires the beneficiary demonstrates safety and independence with the operation of the device at the time of the evaluation. The approval of the power wheelchair is contingent on the beneficiary's documented ability.

- The nursing plan of care documents the beneficiary does not take responsibility for her own behaviors, is disruptive, impulsive, blocks other's movements with her wheelchair and requires frequent and consistent supervision with redirection. Several incidents of reckless driving are documented. The submitted nursing notes from 3/23/2023 document the beneficiary is considered unsafe in an electric wheelchair. This does not meet the coverage conditions for the approval of a power wheelchair.

- Please refer to the Medical Supplier Chapter, Sections: 1.6, 1.8, and 2.47 and the Nursing Facility Coverages Chapter, Sections: 10.8.

Exhibit A, pages 11-12

11. On June 28, 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, pages 5-6).

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 power wheelchairs, 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, April 1, 2023 version
Medical Supplier Chapter, pages 9-10

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

* * *

Power Wheelchair or Power-Operated Vehicle (POV) in Both Community Residential and Institutional Residential Settings	May be covered if the beneficiary meets all of the following: ▪ 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 with or without rest intervals. ▪ Requires use of a wheelchair for at least four hours throughout the day. ▪ Is able to safely operate, control and maneuver the wheelchair in their environmental setting, including through doorways and over thresholds up to 1½", as appropriate. ▪ Has a cognitive, functional level that permits safe operation of a power mobility device with or without training. ▪ Has visual acuity that permits safe operation of a power mobility device. ▪ For a three-wheeled power mobility device, has sufficient trunk control and balance.

10.8 DURABLE MEDICAL EQUIPMENT

10.8.A. STANDARD EQUIPMENT

Standard durable medical equipment is included in the facility's per diem rate. The durable medical equipment supplier and the nursing facility must make arrangements for purchasing or renting required equipment . . .

* * *

Medicaid policy has historically established that standard wheelchairs and other specified durable medical equipment are included in the Medicaid facility per diem rate in accordance with federal standards and state licensure requirements. The following describes what is meant by standard wheelchairs relative to current types of wheelchair products that are routinely prescribed and commonly available in the marketplace, and routinely prescribed and required for patient use in the long-term care environment.

* * *

10.8.B. CUSTOM-FABRICATED SEATING AND/OR POWER WHEELCHAIRS

Custom-fabricated seating and/or power wheelchairs for nursing facility residents may be covered when the established standards of coverage are met and the severity and intensity of the disease process requires custom-fabricated seating or a power-operated wheelchair as medically necessary and is an integral part of the facility's daily nursing plan of care. Repairs to custom-fabricated equipment by the durable medical equipment provider are covered only when it is necessary to make the equipment serviceable. Extensive repairs and maintenance by authorized technicians are covered if the warranty has expired. The durable medical equipment provider may bill for authorized repairs. Routine periodic servicing, such as

> cleaning, testing, regulating, and checking of the equipment, is not separately reimbursable.
>
> *MPM, April 1, 2023 version*
> *Nursing Facility Coverages Chapter, pages 33-34*

Here, as discussed above, Respondent denied Petitioner's request for a power wheelchair 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 her burden of proof and the Department's decision must be affirmed.

As provided in the above policies, a power wheelchair may only be approved if it is medically necessary and the beneficiary is able to safely and independently operate the device, and that is not the case here, where, even after the Department gave specific instructions on what was missing in Petitioner's first request, the submitted nursing notes and plan of care still demonstrate that Petitioner is not safe while operating the wheelchair and the physical therapist gave conflicting statements regarding Petitioner's abilities.

Moreover, while Petitioner's representative testified that Petitioner has been safely using power wheelchairs since 2010, and that the documentation submitted is inaccurate or incomplete, her testimony is unsupported; contradicted by the submitted documentation, with any general complaints Petitioner's representative has about the LTC facility beyond the scope of this proceeding; and 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.

To the extent Petitioner has additional or updated information to provide regarding her need or ability for a power wheelchair, then she and her representative can always have a new prior authorization request submitted in the future along with that information. With respect to the decision at issue in this case however, 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.**

Steven Kibit

SK/sj

Steven Kibit
Administrative Law Judge

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

PROOF OF SERVICE

I certify that I served a copy of the foregoing document upon all parties and/or attorneys, to their last-known addresses in the manner specified below, this 22nd day of August 2023.

S. James

S. James
Michigan Office of Administrative Hearings and Rules

Via Electronic Mail:

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