



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: September 6, 2023
MOAHR Docket No.: 23-004245
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 24, 2023. [REDACTED] Petitioner's Mother, appeared and testified on Petitioner's behalf. Emily Piggott, Appeals Review Officer, represented the Respondent Department of Health and Human Services (DHHS or Department). Danielle Taylor, Departmental Analyst, testified as a witness for the Department.

During the hearing, the Department offered an evidence packet that was admitted into the record as Exhibit A, pages 1-23. No other proposed exhibits were submitted.

ISSUE

Did the Department properly deny Petitioner's prior authorization request for a continuous positive airway pressure (CPAP) device?

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. (Exhibit A, page 10).
2. On June 22, 2023, the Department received a prior authorization request for a CPAP device submitted on Petitioner's behalf by a medical supplier. (Exhibit A, pages 7, 12-19).
3. As part of that request, the results of home sleep testing were included. (Exhibit A, page 12).

4. On June 26, 2023, the Department sent Petitioner a request for additional information. (Exhibit A, page 7).
5. In part, that request stated:

Michigan Medicaid and/or Children's Special Health Care (CSHCS) has received your prior authorization for a CPAP device for 06/22/2023. In order to process this request, please address the following:

- Please resubmit with a sleep study performed in an accredited for coverage for a CPAP. Please refer to section 2.9 of the Medical Supplier chapter of the Medicaid Provider Manual for further information.

The additional information listed above is required with your new resubmission, however you may use your original PA request form provided corrections have been made it identified above.

Exhibit A, page 7

6. No further information was provided, and Petitioner's request for a CPAP was not approved. (Testimony of Departmental Analyst).
7. On July 31, 2023, the Michigan Office of Administrative Hearings and Rules received Petitioner's request for hearing. (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 CPAP devices, the applicable version of the MPM states in part:

2.9 CONTINUOUS POSITIVE AIRWAY PRESSURE DEVICE

Definition	The continuous positive airway pressure (CPAP) device delivers a noninvasive
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	<p>positive air pressure into the upper airway to assist spontaneous respiratory efforts.</p>
<p>Standards of Coverage</p>	<p>A CPAP device may be covered for Obstructive Sleep Apnea (OSA) if a sleep study (polysomnogram) performed in an accredited Sleep Center or Sleep Laboratory documents the following:</p> <ul style="list-style-type: none"> ▪ Apnea-Hypopnea Index (AHI) documents a minimum of 15 events per hour, or ▪ AHI documents 5 to 14 events per hour with related symptoms such as: <ul style="list-style-type: none"> ➤ Excessive daytime sleepiness, impaired cognition, mood disorders; and/or ➤ Hypertension, ischemic heart disease, or history of stroke, or morbid obesity. <p>For beneficiaries under the age of 21 only, tracheomalacia, tracheostomy complications or other anomalies of larynx, trachea, and bronchus may be covered when a particular CPAP setting improved and maintained airway patency and oxygenation.</p>
<p>Documentation</p>	<p>Documentation must be less than 90 days old and include:</p> <ul style="list-style-type: none"> ▪ Diagnosis and/or medical condition related to the need for the CPAP device. ▪ A copy of the sleep study (polysomnogram) for a diagnosis of OSA. The recorded sleep study must contain at least two hours of recorded sleep and the AHI must be calculated using actual recorded hours of sleep.

	<ul style="list-style-type: none"> ▪ For continued coverage beyond the initial four months, documentation must substantiate that the beneficiary has been compliant with the use of the CPAP and the device continues to be effective in treating the condition. If a unit log is maintained, the information must be submitted. ▪ Prescription from an appropriate pediatric subspecialist is required for coverage under the CSHCS Program.
<p>PA Requirements</p>	<p>PA is not required if the Standards of Coverage are met and:</p> <ul style="list-style-type: none"> ▪ The beneficiary is over the age of 21 and has one of the following diagnoses: <ul style="list-style-type: none"> ➤ Obstructive Sleep Apnea (Adults) ➤ Tracheostomy Complications ➤ Tracheomalacia ➤ Other Anomalies of Larynx, Trachea, and Bronchus ➤ Insomnia with Sleep Apnea ➤ Hypersomnia with Sleep Apnea ➤ Other and Unspecified Sleep Apnea ▪ For unobstructive sleep apnea, use diagnosis description of other and unspecified sleep apnea. ▪ The beneficiary is under the age of 21, has one of the above diagnoses, and the device is prescribed by the appropriate pediatric subspecialist.

	<p>PA is required for:</p> <ul style="list-style-type: none"> ▪ Medical need beyond the Standards of Coverage. ▪ Replacement within five years. <p>PA is given for the initial four months and then for the final six months.</p>
<p>Payment Rules</p>	<p>A CPAP device is considered a capped rental item and is inclusive of the following:</p> <ul style="list-style-type: none"> ▪ All accessories needed to use the unit (e.g., tubing, application devices, filters, chinstrap, headgear, etc.). ▪ Education on the proper use and care of the equipment. ▪ Routine servicing and all necessary repairs or replacements to make the unit functional. <p>After the first 10 months of use, necessary repairs and/or replacements of accessories are separately reimbursable. (Replacement parts for the full CPAP mask should be considered prior to replacement of the entire mask.)</p>

*MPM, April 1, 2023 version
Nursing Facility Coverages Chapter, pages 39-41*

Here, as discussed above, Respondent denied Petitioner’s request for a CPAP device 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, the standards of coverage and documentation requirements for approval of a CPAP device require a copy of a recorded sleep study containing at least two hours of recorded sleep performed at an accredited Sleep Center or Sleep Laboratory.

Here, no such study was provided or performed, and the prior authorization request instead only included a home sleep study that failed to meet the applicable criteria.

Accordingly, the request was properly denied.

The parties did discuss Petitioner submitting a new request including documentation as to why Petitioner cannot undergo a sleep study at an accredited center or sleep laboratory; and, to the extent Petitioner has additional or updated information to provide regarding his need for a CPAP device, then he 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**.

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 6th day of September 2023.

S. James

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

Via Electronic Mail:

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