GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
SUZANNE SONNEBORN
EXECUTIVE DIRECTOR

MARLON I. BROWN, DPA
ACTING DIRECTOR

[redacted]
[redacted] MI [redacted]

Date Mailed: September 18, 2023
MOAHR Docket No.: 23-004252
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 September 13, 2023. [redacted] Petitioner's mother and legal guardian appeared on behalf of Petitioner. Donelle Bentley, Senior Analyst, appeared on behalf of Respondent, Priority Health (Department).

Exhibits:

Petitioner	None
Department	A – Hearing Summary

ISSUE

Did the Department properly deny Petitioner's prior authorization request for a Bantam Stander/Standing Frame?

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 cerebral palsy, quadriplegia, localization-related epilepsy with complex partial seizures, and Lennox-Gastaut syndrome. (Exhibit A, p 27; Testimony).

2. On or around March 24, 2023, Department received from Airway Oxygen a prior authorization request completed on behalf of Petitioner seeking a Bantam Stander/Standing Frame. (Exhibit A, pp 27-37.)

3. On April 14, 2023, the Department sent Petitioner a notification of denial. The notice indicated a standing frame is not a covered benefit for members over [redacted] years of age and cited section 2.6 of the Medicaid Provider Manual, Medical Supplier section. (Exhibit A, p 38.)

4. On or around May 17, 2023, the Department received from Petitioner, an internal appeal. (Exhibit A, p 173.)

5. On May 31, 2023, the Department sent Petitioner a notification of denial. The notice stated the following:

> Your request was approved. The details of your case were very clear and well-presented. After thorough review of the additional documentation included in [redacted] appeal case and the information that was shared with the committee, Priority Health has determined that coverage for the Bantum Stander was denied appropriately and in accordance with [redacted] Medicaid policy and the MDHHS Provider Manual.
>
> Coverage under a Michigan Medicaid policy is governed by the Michigan Department of Health and Human Services (MDHHS) who determines what services are considered a Covered Benefit under the policy. The MDHHS Medicaid Provider Manual, Medical Supplier section 2.6 Children's Products, the standing frame is not a covered benefit for members over [redacted] years old; therefore, coverage cannot be approved.[1]

6. On July 31, 2023, the Michigan Office of Administrative Hearings and Rules received Petitioner's request for hearing.

CONCLUSIONS OF LAW

The Medical Assistance Program (MA) 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.

On May 30, 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 Medicaid Health Plans.

[1] Exhibit A, p 315.

The covered services that the Contractor has available for enrollees must include, at a minimum, the covered services listed below (List omitted by Administrative Law Judge). The Contractor may limit services to those which are medically necessary and appropriate, and which conform to professionally accepted standards of care. Contractors must operate consistent with all applicable Medicaid provider manuals and publications for coverages and limitations. If new services are added to the Michigan Medicaid Program, or if services are expanded, eliminated, or otherwise changed, the Contractor must implement the changes consistent with State direction in accordance with the provisions of Contract Section 1-Z.

The major components of the Contractor's utilization management plan must encompass, at a minimum, the following:

- Written policies with review decision criteria and procedures that conform to managed health care industry standards and processes.
- A formal utilization review committee directed by the Contractor's medical director to oversee the utilization review process.
- Sufficient resources to regularly review the effectiveness of the utilization review process and to make changes to the process as needed.
- An annual review and reporting of utilization review activities and outcomes/interventions from the review.

The Contractor must establish and use a written prior approval policy and procedure for utilization management purposes. The Contractor may not use such policies and procedures to avoid providing medically necessary services within the coverages established under the Contract. The policy must ensure that the review criteria for authorization decisions are applied consistently and require that the reviewer consult with the requesting provider when appropriate. The policy must also require that utilization management decisions be made by a health care professional who has appropriate clinical expertise regarding the service under review.

Medicaid covered benefits are addressed for the practitioners and beneficiaries in the Medicaid Provider Manual (MPM). Regarding the specific request in this case, *i.e.* a headrest cover (canopy), 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.
>
> * * *
>
> **Durable Medical Equipment (DME)**
>
> Equipment that can withstand repeated use, is reusable or removable, is suitable for use in any non-institutional* setting in which normal life activities take place, is primarily and customarily used to serve a medical purpose, and is generally not useful to an individual in the absence of illness, injury or disability. Examples are: hospital beds, wheelchairs, and ventilators. DME is a benefit for beneficiaries when:
>
> - It is medically and functionally necessary to meet the needs of the beneficiary.

- It may prevent frequent hospitalization or institutionalization.

- It is life sustaining.

* * *

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, 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.

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.[2]

[2] MPM, Medical Supplier, pp 1, 9, July 1, 2023.

Here, the Department sent Petitioner written notice that the prior authorization request for a Bantam Stander/Standing Frame was denied on the basis that Medicaid Policy did not permit standers for those aged [redacted] and older.

The policy cited and relied upon by Department does not explicitly forbid standers for those [redacted] years of age and older. It mentions that children's products that may be considered for coverage include equipment used by children under the age of [redacted] for various purposes. And while it lists various examples of equipment, including standers, it does not specify an age limit for the use of these items.

Petitioner's mother and legal guardian provided detailed testimony regarding Petitioner's need for the device and further pointed out that the item being requested is not labeled as a children's device, and, moreover, that it comes in various sizes to accommodate different sized individuals.

The Department did not provide any other policy as to why the requested device should be denied. Therefore, because it has been determined that the relied upon policy does not forbid the use of a stander by those aged [redacted] and over, it is determined the Department's actions were not supported by the applicable laws and policies, and the Department is, therefore, ordered to reprocess Petitioner's prior authorization request to determine the medical necessity of the requested item.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED THAT:

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

The Department is ordered to initiate the reprocessing of Petitioner's prior authorization request to determine the medical necessity of the request and issue Petitioner the appropriate approval/denial notice.

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:

Petitioner

[redacted] MI [redacted]

Authorized Hearing Representative

[redacted] MI [redacted]

Community Health Representative
Priority Health Choice
Kellie McCowan
1231 E. Beltline NE
Grand Rapids, MI 49525-4501
Kellie.mccowan@priorityhealth.com

DHHS Department Contact
Managed Care Plan Division
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