



GRETCHEN WHITMER
GOVERNOR

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

MARLON I. BROWN, DPA
ACTING DIRECTOR

[REDACTED]
[REDACTED]
MI [REDACTED]

Date Mailed: October 4, 2023
MOAHR Docket No.: 23-004975
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 a request for a hearing filed on the minor Petitioner's behalf.

After due notice, a telephone hearing was held on October 3, 2023. [REDACTED] Petitioner's father, 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). Danielle Taylor, Departmental Analyst, testified as a witness for the Department.

During the hearing, Petitioner's request for hearing and the denial at issue in the case were admitted into the record as Exhibits A and B respectively. The remainder of the evidence packet submitted by the Department was not admitted after Petitioner's representative denied receiving it and the undersigned Administrative Law Judge determined it was not necessary.

ISSUE

Did the Department properly deny Petitioner's prior authorization request for portable oxygen and an oxygen concentrator?

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 B, page 1).
2. In July of 2023, the Department received a prior authorization (PA) request for portable oxygen and an oxygen concentrator for Petitioner submitted on Petitioner's behalf by a durable medical equipment (DME) supplier. (Testimony of Analyst).

3. In response, the Department sent Petitioner a request for additional information. (Testimony of Analyst).
4. On August 7, 2023, the Department received another prior authorization request for portable oxygen and an oxygen concentrator submitted on Petitioner's behalf. (Exhibit B, page 1).
5. As part of the documentation submitted along with that new request, Petitioner's doctor wrote that the requested equipment was for emergency use when asked how many hours per day Petitioner is on oxygen. (Testimony of Analyst).
6. On August 9, 2023, the Department sent Petitioner's parents written notice that the prior authorization request had been denied. (Exhibit B, pages 1-3).
7. With respect to the reason for the denial the notice stated:

The policy this denial is based on is Section 2.30 of the Medical Supplier Chapter of the Medicaid Provider Manual. Specifically:

- The CMN submitted indicates the oxygen is to be used for "emergency use only" and 0-3 liters as the prescribed liter flow. An order for as needed oxygen does not meet policy requirements. The provider is welcome to resubmit a new PA request if the liter of flow changes and the number of hours per day the beneficiary wears the oxygen changes.
- Private duty nursing records indicate that the beneficiary is on room air, if the DME provider resubmits a new PA for the requested equipment please ensure a new current qualifying saturation test is included.

Exhibit B, page 1

8. On August 28, 2023, the Michigan Office of Administrative Hearings and Rules received the request for hearing filed in this matter. (Exhibit A, pages 1-2).

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 oxygen, oxygen equipment and accessories, the applicable version of the MPM states in part:

2.30 OXYGEN, OXYGEN EQUIPMENT AND ACCESSORIES

Definition	Oxygen therapy includes, but is not limited to, stationary compressed systems, portable gaseous systems, stationary liquid systems, portable liquid systems, and concentrators.
Standards of Coverage	<p>Stationary oxygen equipment and accessories may be covered in the home setting for either short-term (less than six months) or long-term (six months or greater) use.</p> <p>For beneficiaries under age 21, oxygen therapy may be covered when oxygen is required during a variety of activities (e.g., sleeping, feeding, resting) and there is an oxygen saturation rate of 93 percent or below or PO₂ level of 65 mm HG or below . . .</p>
Documentation	<p>Documentation must be less than 30 days old and include the following:</p> <ul style="list-style-type: none"> ▪ Diagnosis/medical condition appropriate for the need of oxygen. ▪ Required liter flow (e.g., two liters per minute). An order for "Oxygen PRN" or "Oxygen as Needed" does not meet this requirement. ▪ Hours used per day (e.g., eight hours

	<p>a day). For intermittent use (less than eight hours per day), indicate activity or time of day. An order for "Oxygen PRN" or "Oxygen as Needed" does not meet this requirement.</p> <ul style="list-style-type: none">▪ Duration of need (e.g., three months, six months or lifetime).▪ Delivery system to be used (e.g., concentrator, compressed gas, liquid).▪ Current PO₂ or oxygen saturation level while on room air.▪ For liquid oxygen, total number of pounds required per month.▪ A prescription from a pediatric pulmonologist, a neonatologist, a pediatrician intensivist, and/or pediatric cardiologist is required under the CSHCS program . . .
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*MPM, July 1, 2023 version
Nursing Facility Coverages Chapter, pages 79-80*

Here, as discussed above, Respondent denied Petitioner's request for portable oxygen and an oxygen concentrator 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. 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, for oxygen, oxygen equipment or accessories to be approved, the submitted documentation must include the hours per day oxygen is used, with orders for oxygen PRN or as needed specifically identified as insufficient.

Here, it is undisputed that the request submitted on Petitioner's behalf only indicated that the oxygen was for "emergency use only" and, consequently, the request did not meet the above criteria for approval.

The denial did indicate that Petitioner's provider could submit a new prior authorization request, and Petitioner remains free to do so.¹ 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

¹ Petitioner's representative testified that he was told another request has already been submitted, but his testimony is unsupported and slightly inconsistent, with statements that the prior authorization request was submitted in mid-August and prior to the request for hearing in this case while the request for hearing was not filed until August 28, 2023. Regardless, any new request is outside the scope of this matter.

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, to their last known addresses in the manner specified below, this 4th day of October 2023.

S. James

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

Via Electronic Mail:

Petitioner

[REDACTED]

[REDACTED] MI 4 [REDACTED]

[REDACTED]

Agency Representative

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