



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: December 21, 2023

MOAHR Docket No.: 23-007934

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 December 14, 2023. [REDACTED] Petitioner's mother, appeared and testified on the minor Petitioner's behalf. Leigha Klaver, Appeals Review Officer, represented the Respondent Department of Health and Human Services (DHHS or Department). Adam Schlaufman, Departmental Utilization Analyst, testified as a witness for the Department.

During the hearing, the Department offered an evidence packet that was admitted into the record without objection as Exhibit A, pages 1-71. No other proposed exhibits were submitted.

ISSUE

Did the Department properly deny Petitioner's prior authorization request for modifications to her power wheelchair?

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 spinal muscular atrophy and is dependent on both a ventilator and g-tube. (Exhibit A, page 17; Testimony of Petitioner's representative).
2. When she was [REDACTED] years-old, Petitioner received a power wheelchair through the Department. (Exhibit A, pages 29-58; Testimony of Petitioner's representative; Testimony of Departmental Utilization Analyst).

3. In the request for that power wheelchair, Petitioner's providers indicated that Petitioner performed a trial with the recommended wheelchair and was able to navigate her environment; she had the visual acuity and perception that permitted safe and independent operation of the wheelchair; she had the problem-solving skills appropriate to operate the wheelchair; and she is able to understand and follow directions that are complex or abstract. (Exhibit A, pages 38, 46).
4. On August 11, 2023, the Department received a prior authorization request submitted on Petitioner's behalf for modifications to her power wheelchair, specifically an attendant stop switch and blind spot sensor. (Exhibit A, pages 16-28).
5. As part of the request, the medical supplier included a letter from an occupational therapist regarding the medical necessity for the modifications. (Exhibit A, page 20).
6. That letter stated in part:

[Petitioner] requires the use of a ventilator and suction equipment which is mounted on the back of her power wheelchair. She has had incidences of backing into walls putting the equipment at risk of damage. She has challenges with attention and requires adult support with her when driving her power wheelchair due to a safety risk.

[Petitioner's] adult support attendant requires a remote stop switch to ensure her safety when she is using her powerchair. The blind spot sensor is also recommended for [Petitioner] to improve awareness of her surroundings to keep her and the lifesaving equipment safe from damage.

Exhibit A, page 20

7. On August 30, 2023, the Department sent Petitioner written notice that the request for modifications had been denied. (Exhibit A, pages 10-11).
8. With respect to the reason for the denial, the notice stated in part:

The policy this denial is based on is Section 1.6, 1.11, and 2.47 of the Medical Supplier chapter of the Medicaid Provider Manual. Specifically:

- The coverage of a pediatric power wheelchair requires the beneficiary is independent with operation and that they demonstrate the appropriate cognitive, comprehensive, and visual abilities to safely operation the wheelchair over thresholds and around obstacles. The documentation does not support the medical necessity for the requested power wheelchair attendant stop switch and blind spot sensor.
- Refer to the Medical Supplier chapter sections 1.6, 1.11, and 2.47.

Exhibit A, page 10

9. On November 16, 2023, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the request for hearing filed with respect to that denial. (Exhibit A, pages 8-9).

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 medical necessity, noncovered items and 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.

* * *

1.11 NONCOVERED ITEMS

Items that are not covered by Medicaid include, but are not limited to:

* * *

- Wheelchair accessories (e.g., horns, lights, bags, special colors, etc.)

* * *

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: <ul style="list-style-type: none">▪ 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.
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	<ul style="list-style-type: none">▪ For a three-wheeled power mobility device, has sufficient trunk control and balance.
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*MPM, July 1, 2023 version
Medical Supplier Chapter, pages 9-10, 25, 27, 110*

Here, as discussed above, Respondent denied Petitioner's request for modifications to her power wheelchair pursuant to the above policies, and the basis that the documentation did not support medical necessity for the requested modifications as coverage of a pediatric power wheelchair requires that a beneficiary is independent with operation and that he or she demonstrate the appropriate cognitive, comprehensive, and visual abilities to safely operate the wheelchair.

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 that burden of proof and the Department's decision must be affirmed.

Wheelchair accessories are expressly listed as noncovered items in the MPM, and, while the requested modifications appear much more significant than the examples of accessories listed in policy, including horns, lights, and bags, the Department still properly relied on that policy and others in denying Petitioner's request.

Petitioner was only approved for the power wheelchair in the past per the above policies and based on findings that, without any modifications, she could safely operate, control, and maneuver the wheelchair in her environmental setting; she had a cognitive functional level that permitted safe operation of a power mobility device with or without training; and that she had the visual acuity that permits safe operation of a power mobility device.

It is not clear if Petitioner would have been approved for a power wheelchair in the past had her providers stated then what her OT is stating now, but, regardless, she was approved and nothing in the submitted documentation demonstrates that there have been any significant changes with Petitioner since that approval. Accordingly, while the undersigned Administrative Law Judge sympathizes with Petitioner, there has likewise been no demonstration of medical necessity for the requested modifications and the prior authorization request was properly denied.

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, to their last known addresses in the manner specified below, this 21st day of December 2023.

S. James

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

Via Electronic Mail:

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[REDACTED]
MI [REDACTED]