



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

MARLON I. BROWN, DPA  
DIRECTOR



Date Mailed: October 2, 2024  
MOAHR Docket No.: 24-009009  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Corey Arendt**

**DECISION AND ORDER**

This matter is before the undersigned Administrative Law Judge (ALJ) 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 September 24, 2024. [REDACTED] Petitioner’s mother, appeared and testified on Petitioner’s behalf. Kimmel Page, Appeals Specialist, appeared on behalf of Respondent Molina (Department). Dr. John Briles, Senior Medical Director, appeared as a witness for the Department.

Exhibits:

Petitioner	None
Department	A. Hearing Summary

**ISSUE**

Did the Department properly deny Petitioner’s prior authorization request for an activity chair 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, among other conditions, “spastic quadriplegic cerebral palsy, history of seizures and dysphagia. Petitioner is dependent for all transfers, demonstrates poor head and trunk control, and limited voluntary movements of her upper and lower extremities.” (Exhibit A, p 4; Testimony).

2. In June of 2024, the Department received a prior authorization request submitted on Petitioner's behalf for a special tomato soft touch sitter with mobile base, headrest, and mobility activity tray. The rationale for the request was a need for safe seating and positioning within the home. (Exhibit A; Testimony).
3. On July 2, 2024, Petitioner was seen by an occupational therapist to determine the medical necessity of the tomato sitter. (Exhibit A; Testimony).
4. Following the assessment, it was determined a manual wheelchair/stroller (Pediatric Folding with Tilt-In-Space and Recline) was more appropriate and would meet both Petitioner's positioning and mobility needs as well as meet Petitioner's future needs both within the home and outside of the home in Petitioner's community. (Exhibit A; Testimony).
5. On July 3, 2024, the Department sent Petitioner a negative action notice, denying Petitioner's request for a tomato sitter. (Exhibit A; Testimony).
6. On July 22, 2024, the Department received from Petitioner, an appeal of the July 3, 2024, negative action notice. The appeal indicated a manual wheelchair, or stroller would not meet Petitioner's needs within the home due to limited space and issues moving the device up and down stairs. (Exhibit A).
7. On July 25, 2024, the Department sent Petitioner a Physician Reviewer Denial Letter upholding the July 3, 2024, determination.
8. On August 12, 2024, the Michigan Office of Administrative Hearings and Rules received from Petitioner, a request for hearing.

### **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).

Both manual wheelchairs like the one Petitioner was previously approved for and the activity chair she has now requested may be covered pursuant to the MPM and, with respect to such wheelchair, the MPM states in part:

## 2.6 CHILDREN'S PRODUCTS

<b>Definition</b>	Children's products that may be considered for coverage include, but are not limited to, equipment that is used in the home or vehicle by children under age 21 for the purposes of positioning, safety during activities of daily living, or assisted mobility. Examples of these items include: bath supports, specialized car seats, corner chairs, dynamic standers, feeder seats, gait trainers, pediatric walkers, positioning commodes, side lyers, standers, and toileting supports.
<b>Standards of Coverage</b>	Children's products are covered if one or more of the following applies: <ul style="list-style-type: none"> <li>▪ Beneficiary is unable to independently maintain a seated position.</li> <li>▪ Beneficiary cannot stand and/or ambulate without the aid of an assistive device.</li> <li>▪ Beneficiary has physical anomalies that require support to allow a functional position or prevent further disability.</li> </ul>
<b>Documentation</b>	Documentation must be less than 180 days old and include all of the following: <ul style="list-style-type: none"> <li>▪ Diagnosis appropriate for the equipment requested.</li> <li>▪ Any adaptive or assistive devices currently used in the home.</li> <li>▪ Reason economic alternatives cannot be used, if applicable.</li> <li>▪ Statement of functional need from an appropriate pediatric subspecialist, occupational or physical therapist.</li> </ul>
<b>PA</b>	PA is required for all requests.

<b>Requirements</b>	
<b>Payment Rules</b>	All children's products are considered purchase only items. <sup>1</sup>

\* \* \*

Moreover, any activity chair would have to be medically necessary and, with respect to medical necessity, the MPM also 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, 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.

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.

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<sup>1</sup> Medicaid Provider Manual, Medical Supplier, April 1, 2024, p 37.

- 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 function of the service/device:
  - meets accepted medical standards;
  - practices 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.

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.<sup>2</sup>

Regarding items that are not covered, the MPM further states in part:

### **1.11 NONCOVERED ITEMS**

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

\* \* \*

- Devices used for play, pre-mobility development, or exercise are not considered pediatric mobility devices for the purpose of reimbursement and are not covered (e.g., jet mobile, ready racer, creepster crawler)

\* \* \*

- Equipment for social or recreational purposes

\* \* \*

- Second wheelchair for beneficiary preference or convenience<sup>3</sup>

Here, the Department denied Petitioner's prior authorization request for a tomato sitter. In support of that decision, the Department's Analyst testified regarding the request that was received and the applicable policies. Specifically, it was noted that another device would be more appropriate and continue to meet Petitioner's future needs as well.

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<sup>2</sup> Medicaid Provider Manual, Medical Supplier, April 1, 2024, pp 9-10.

<sup>3</sup> Medicaid Provider Manual, Medical Supplier, April 1, 2024, pp 25-26.

In response, Petitioner indicated the substituted item, a manual wheelchair/stroller (pediatric) would not fit in the kitchen and could not be transported by the mother who was petite in size and unable to lift the device.

Petitioner bears the burden of proving by a preponderance of the evidence that the Department erred in denying the request for tomato sitter. Moreover, the undersigned Administrative Law Judge reviews the Department's decision in light of the information that was available at the time the decision was made.

Given the available evidence and applicable policies in this case, the undersigned Administrative Law Judge finds that Petitioner has failed to meet her burden of proof; and the Department's decision must, therefore, be affirmed. In order for Pediatric mobility devices like a wheelchair to be covered, it must be transportable.<sup>4</sup> Although Petitioner argued the mother was petite in size, there was nothing in the record to indicate the dimensions of the alternative device or weight components that would prevent an individual from transporting it or moving it. Additionally, although there was testimony regarding house restrictions that would prevent the use of the alternative device, again, the specific dimensions of the device were not provided, nor was it clearly explained why the device could not be folded up and moved about within the home to accommodate Petitioner's needs to be in different areas of the home.

To the extent Petitioner's representative has additional or updated information to provide regarding Petitioner's need for the tomato chair, she can always request the item again in the future along with that information. With respect to the issue in this case, however, the Department's decision must be affirmed given the available information and applicable policies.

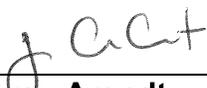
### **DECISION AND ORDER**

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**.

CA/pe

  
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**Corey Arendt**  
Administrative Law Judge

<sup>4</sup> Medicaid Provider Manual, Medical Supplier, April 1, 2024, p 113.

**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:**

**Community Health Representative**

Molina Healthcare of Michigan

Lisa Johnson

880 W. Long Lake Rd., Ste. 600

Troy, MI 48098

**[Lisa.Johnson@molinahealthcare.com](mailto:Lisa.Johnson@molinahealthcare.com)**

**DHHS Department Contact**

MDHHS Managed Care Plan Division

400 S. Pine St., 7<sup>th</sup> Floor

Lansing, MI 48933

**[MDHHS-MCPD@michigan.gov](mailto:MDHHS-MCPD@michigan.gov)**

**Via First Class Mail:**

**Petitioner**

[REDACTED]

[REDACTED] MI [REDACTED]