[redacted]
MI [redacted]

Date Mailed: September 13, 2024
MOAHR Docket No.: 24-009196
Agency No.: [redacted]
Petitioner: [redacted]

ADMINISTRATIVE LAW JUDGE: Robert J. Meade

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 hearing.

After due notice, a telephone hearing was held on September 11, 2024. Kyle Craft, Speech/Language Pathologist, Authorized Hearing Representative, appeared and testified on Petitioner's behalf. [redacted] Petitioner's mother, appeared as a witness for Petitioner. Kimmel Page, Specialist, Appeals & Grievance, appeared on behalf of Respondent Molina Healthcare, the Medicaid Health Plan (Respondent or MHP). Dr. Jon Briles, Senior Medical Director, appeared as a witness for Respondent.

During the hearing, Respondent submitted an evidence packet that was admitted into the record as Exhibit A, pages 1-141.

ISSUE

Did Respondent properly deny Petitioner's prior authorization (PA) request for a speech generating device (SGD)?

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 minor Medicaid beneficiary who has been diagnosed with autistic disorder and mixed receptive-expressive language disorder. (Exhibit A, p 32; Testimony).

2. On March 18, 2024, Respondent received a PA request for a speech generating device (SGD) submitted on Petitioner's behalf. (Exhibit A, pp 32-56; Testimony).

3. A Letter of Medical Necessity was included with the PA request and, in part, that letter stated:

> I am submitting a request for purchase of the Tobii Dynavox I-110 device for my client, [redacted] who has a medical diagnosis of Autism (F84.0) and a speech-language diagnosis of severe Receptive Expressive Language Disorder (F80.2) and severe Speech Disorder (R47.9). These diagnoses have left my patient functionally nonverbal and unable to adequately express basic, functional, and medical needs in an effective way without the use of Augmentative-Alternative Communication (AAC).
>
> As outlined in the Evaluation for a Speech Generating Device dated February 19, 2024, it is medically necessary for [redacted] to have access to a speech-generating device (SGD) so that his medical needs can be expressed and met. Dr. Sarah Sanchez agreed with my recommendation for purchase of the Tobii Dynavox 1-110 device as the most cost-effective solution for meeting [redacted] current medical communication needs.
>
> I realize that Tobii Dynavox is an out-of-network provider, however, Tobii Dynavox is the sole provider of the requested equipment.
>
> ****
>
> ... I have ruled out other vendors in favor of Tobii Dynavox's I-110 for several reasons:
>
> Language — [redacted] has been most successful using the Snap + Core First page-sets on the Tobii Dynavox 1-110 device. However, because of the preferred provider agreement with insurance, there is pressure to move the client to a non-Tobii Dynavox device. This is parallel to forcing an individual to communicate in a different language than the one (HE/SHE) is most familiar with and adept at.
>
> Navigation — [redacted] lost interest in other speech devices because the language framework was less intuitive and he had difficulty locating frequently used (CORE) vocabulary. Appropriateness - If only the device from the preferred provider is funded, [redacted] may end up with a device which is less than optimal and/or not the most appropriate for his needs.

Critical Features - The non-Tobii Dynavox devices considered do not offer critical features which are available with Snap Core first on the Tobii Dynavox I-110 device: page sets which include a wide variety of pre-designed button layouts, a full range of Acapela voices, a user interface designed for easy editing and grid size changes, standard functions for dragging and dropping, quicker actions for linking pages, and a new Search tool for finding words quickly; it also comes with free cloud storage backup.

Availability - Core First, which has its roots in research by the University of North Carolina at Chapel Hill, helps the communicator continuously build vocabulary and skills and takes advantage of motor learning by introducing new vocabulary systematically and purposefully, which allows users to move up or down and always know where to find vocabulary. It is built on three pillars for communication success: growth, engagement, and literacy.

Hide/ Show Keys - The feature of hiding and showing keys enables the device user to get to the desired keys in a faster and more efficient manner. Fast access to keys is critical.

Consultants - Tobii Dynavox offers customer support that is unique and unmatched in this industry. Their field representatives have extensive experience and skill in AAC, with backgrounds in speech-language pathology, special education, occupational therapy, and related disciplines. They provide free initial setup, free on-location training and assistance on all equipment, free on-line webinars, and onsite visits when needed.

The Tobii Dynavox1-110 is the recommended SOD for various reasons. Features of the TD 1-110 that make it the most appropriate device for this client include: ergonomic design which makes it easy to hold and carry, superior audio quality which allows for better communication needs to be met with all communication partners, has a comprehensive language system in ID Snap which allows for multiple options regarding literacy and vocabulary arrangement, features a built-in stand allowing for increased access, comes with a durability case which allows for increased protection of the device, and will work with mounting systems through the included mount plate, with greater than 10 hours of normal run time to get through a full day of school/ABA therapy/outpatient speech therapy without losing his means of communication, offers a charge time of less

> than 3 hours (while the device is powered off), 3 years of warranty and Support 360, is superior in durability (gorilla glass screen) as patient is rough with objects due to fine/gross motor issues that are characteristic with patient's Autism, moisture/dust resistance, Screen/display size: 10.1"; weight: 2.5 lbs so it is small/lightweight.
>
> I have considered and ruled out all other devices for [redacted] This includes the Inspire Speech Generating Device, inspire XL Speech Generating Device, and Nuvo Speech Generating device. The Nuvo device operates on an iOS operating system. My client and his family are knowledgeable about Windows systems which runs on the I-110 device. The Inspire Speech Generating Device is powered by Grid 3 software. As stated above, my client did best with the Snap + Core First software. Since this does not come on this device, it does not best meet his needs. Lastly, the Inspire XL Speech Generating Device is a 14 inch screen and is way too large for my client to access functionally. This device also only comes with Grid 3 software and does not meet his needs. The Tobil Dynavox 1-110 is the only device that will allow [redacted] to meet his basic and functional communication needs. Please review all attached information and approve this device for him. This equipment is medically necessary and not available from any other durable medical equipment supplies. Please approve this specific equipment for [redacted] to be able to communicate all basic and functional needs. if further informatio.n is needed to substantiate this request, please contact me. Thank you for your time.
>
> (Exhibit A, pp 55-56).

4. On March 19, 2024, Respondent sent Petitioner written notice that the prior authorization request had been denied. (Exhibit A, pp 57-69; Testimony). Specifically, the notice indicated, in relevant part:

> The notes sent in show that your child has speech problems. The notes show that your child has autism. And the notes show that your child needs a device to help them communicate. A request was received for a speech generating device. The requested provider is out of network. This does not meet the guideline rules for out of network services. This service is available by network partners in your child's area. The notes do not show a medical need that could not be met by a Molina partner. Therefore, out of

> network provider service is denied. Please speak with your child's doctor about your child's available options.
>
> APPROVED MOLINA PROVIDERS ARE LISTED BELOW:
>
> Hart Medical Equipment LLC
> 6250 S Cedar St.
> Lansing, MI 48911
> Phone: 517-346-4777
>
> Befitting You LLC
> 1 William Carls Dr.
> Commerce Township, MI 48382
> Phone: 888-468-0485
>
> (Exhibit A, p 60; Testimony).

5. On March 28, 2024, Petitioner requested an internal appeal. (Exhibit D, pp 70-91; Testimony).

6. On April 16, 2024, Respondent issued a Notice of Appeal Denial, upholding the original denial. (Exhibit E, pp 92-105; Testimony). Specifically, the Notice indicated, in relevant part:

> The Appeals & Grievance (AnG) Department at Molina Healthcare of Michigan received your request for a speech generating device on 03/28/2024. Your appeal was reviewed by a Molina Healthcare of Michigan Medical Director, who is a Medical Doctor MD and is certified in Osteopathic Medicine.
>
> The notes sent in show that your child has speech problems and autism. The notes show that your child needs a tool to help them communicate. A request was received for a speech generating tool. The asked for provider is out of group. This does not meet the rules for out of group services. This service is available by group partners in your child's area. The notes do not show a healthcare need that could not be met by a Molina partner. So, out of group provider service is denied. Please speak with your child's doctor about your child's available choices.
>
> (Exhibit A, p 95).

7. On August 15, 2024, the Michigan Office of Administrative Hearings and Rules (MOAHR) received Petitioner's request for hearing. (Exhibit A, pp 2-30).

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.

In 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 MHPs and, as provided in the Medicaid Provider Manual (MPM), is responsible for providing covered services pursuant to its contract with the Department:

SECTION 1 – GENERAL INFORMATION

The Michigan Department of Health and Human Services (MDHHS) contracts with Medicaid Health Plans (MHPs), selected through a competitive bid process, to provide services to Medicaid beneficiaries. The selection process is described in a Request for Proposal (RFP) released by the Office of Purchasing, Michigan Department of Technology, Management & Budget. The MHP contract, referred to in this chapter as the Contract, specifies the beneficiaries to be served, scope of the benefits, and contract provisions with which the MHP must comply. Nothing in this chapter should be construed as requiring MHPs to cover services that are not included in the Contract. A copy of the MHP contract is available on the MDHHS website. (Refer to the Directory Appendix for website information.)

MHPs must operate consistently with all applicable published Medicaid coverage and limitation policies. (Refer to the General Information for Providers and the Beneficiary Eligibility chapters of this manual for additional information.) Although MHPs must provide the full range of covered services listed below, MHPs may also choose to provide services over and above those specified. MHPs are allowed to develop prior authorization requirements and utilization management and review criteria that differ from Medicaid requirements. The following subsections describe covered services, excluded services, and prohibited services as set forth in the Contract.

1.1 SERVICES COVERED BY MEDICAID HEALTH PLANS (MHPS)

The following services must be covered by MHPs:

****

- Hearing and speech services

****

2.7 OUT-OF-NETWORK SERVICES

2.7.A. PROFESSIONAL SERVICES

With the exception of the following services, MHPs may require out-of-network providers to obtain plan authorization prior to providing services to plan enrollees:

- Emergency services (screening and stabilization);
- Family planning services;
- Immunizations;
- Communicable disease detection and treatment at local health departments;
- Child and Adolescent Health Centers and Programs (CAHCP) services;
- Tuberculosis services; and
- Certain MIHP services (refer to the Maternal Infant Health Program Chapter for additional information).

MHPs reimburse out-of-network (non-contracted) providers at the Medicaid fee-for-service (FFS) rates in effect on the date of service.

Medicaid Provider Manual
Medicaid Health Plans Chapter
January 1, 2024, pp 1, 6
Emphasis added

2.38 SPEECH GENERATING DEVICES

Definition Speech generating devices (SGD) are defined as durable medical equipment (electric or nonelectric) that provide an individual with a severe speech impairment, who is unable to communicate using natural means (e.g., spoken, written, gestures, sign language), the ability to meet his or her daily communication needs.

Other terms used interchangeably with SGD include augmentative and alternative communication (AAC) device or augmentative communication device (ACD).

Standards of Coverage

To be considered for coverage, documentation must substantiate medical need for beneficiaries whose needs cannot be met using natural communication methods and demonstrate the comprehension and physical skills necessary to communicate using the requested device. An SGD will be considered medically necessary when supporting documentation demonstrates all of the following:

- The prognosis for developing and using oral speech as a primary method of communication is considered guarded;
- The requested SGD is an integral part of the communication plan of care; and
- The beneficiary will be able to use the device in all environments he/she frequents (e.g., home, school, job, etc.).

Software intended for augmentative communication purposes may be considered upon review of documentation supporting medical necessity. If the beneficiary intends to download augmentative communication software onto his/her personal laptop, computer, or iPad, it is the responsibility of the beneficiary and/or his/her legal guardian to check with the vendor of the personal device for licensing, compatibility, repair, warranty and proprietary information.

Standards of Coverage – Eye Control

An eye control is a type of mechanism that helps the beneficiary access the SGD. The eye control may or may not be integrated within the speech generating device. Eye control mechanisms will be covered when all of the following apply:

- All other methods to operate the SGD have been evaluated and ruled out and the eye control is the most appropriate method that provides a functional level of communication (speed, accuracy, etc.);
- Documentation specifies medical, functional and physical necessity that supports the need for the eye control; and
- The evaluation(s) has documented evidence of the beneficiary's ability to physically activate the system and demonstrate meaningful use of the device with minimal assistance from others.

Non-covered The following are non-covered:

- Items that do not meet the definition of durable medical equipment and are not dedicated speech devices.
- Software to play games, create spreadsheets or documents or is not specific to augmentative communication.
- Environmental control units.
- More than one SGD per beneficiary.
- Registering the device.
- Extended warranties.
- SGDs used solely for education, vocational or recreational purposes. It is expected that the beneficiary will be able to use the device in all environments he/she frequents (e.g., home, school, job, etc.).
- Replacements based on manufacturer recommended replacement schedules.
- SGD requests for devices that do not match the beneficiary's current and reasonably foreseeable communication abilities and needs.
- Separate billing for interfaces, cables, adapters or interconnects and switches (with the exception of accessing switches) necessary to interface with the SGD.
- Requests for replacement due to new technology when the beneficiary's current SGD continues to meet his/her medical and functional needs.
- Items that are not defined by the American Medical Association, the Food and Drug Administration, and the Pricing, Data Analysis, and Coding (PDAC) contractor as medical devices or dedicated durable medical equipment (e.g., personal tablets, computers, iPads, iPhones, etc.).

Evaluation Components

A speech-language pathologist, in conjunction with other disciplines such as occupational therapists, physical therapists, psychologists, and seating specialists as needed, must provide a thorough and systematic evaluation of the beneficiary's receptive and expressive communication abilities.

Ancillary professionals must possess proper credentials (certification, license and registration, etc.) as appropriate.

SGD vendors (manufacturers, distributors) may not submit assessment information or justification for any requested SGD.

An objective evaluation (using objective functional baseline measures and/or standardized testing) of the beneficiary's receptive and expressive communication abilities by a speech-language pathologist (SLP), in conjunction with other applicable disciplines (e.g., occupational therapist, physical therapist, psychologists, and seating specialists, etc.) as needed, has been performed and the SLP has documented the following:

- The beneficiary's functional ability to use the device throughout their daily activities.
- The consideration of alternative access and positioning devices, as appropriate.
- The device is appropriate to the beneficiary's current comprehension, abilities and skills.
- The beneficiary demonstrates the cognitive, physical, visual and hearing skills necessary to communicate using the requested device.
- The SGD is the least costly device that meets the beneficiary's basic communication needs (in the home and in their community). Include in the evaluation supporting documentation substantiating the requested device as the least costly alternative that meets the beneficiary's current functional needs.
- <u>Assessment of the beneficiary on more than one device, by more than one manufacturer, and documenting why the requested device is more appropriate than the other device(s). Include the following in the evaluation:</u>
    - <u>Device(s) evaluated;</u>
    - <u>The beneficiary's performance on each device evaluated;</u>
    - <u>The device requested (brand, make/model and type); and</u>
    - <u>Reasons why other evaluated devices did not meet the beneficiary's needs.</u>
- A trial period using the requested device must be provided for initial device authorization requests. The trial period must be a least one

month in length (the SLP may submit a prior authorization request for up to three months). The SLP must document a description of the trial period with the requested device, including length of trial, settings, outcome, and additional training needs identified.

Documentation

Documentation must be within 180 days and include:

- the physician's order with the diagnosis directly related to the beneficiary's communication deficit. The order must be based on the SLP's evaluation of the beneficiary's communication abilities and medical needs.
- the date of onset, progress made and a comprehensive summary of the beneficiary's communication goals. (Refer to criteria outlined in the Therapy Services Chapter, Speech-Language Therapy subsection.)
- the assessment by a physical therapist (PT) or occupational therapist (OT) to address functional mobility and postural control.
- the SLP's documentation of hearing and vision status.
- a copy, if available, of the hearing (audiologist) or vision (ophthalmologist or optometrist) test if the beneficiary has had a hearing or vision test within the past 12 months.
- a plan of care (POC) identifying other disciplines involved in the care and goals for therapy and training. For beneficiaries under the age of 21 attending school, the POC must include other disciplines and parents/legal guardian as appropriate (i.e., OT, PT, psychologist, school therapist, etc.).
- specifications for the SGD. (Refer to the Therapy Services Chapter).
- necessary therapy and training to allow the beneficiary to meet functional needs.
- the speech and language evaluation results.

All SGD evaluation documentation must be submitted following the established criteria stated within the Evaluations and Follow-up for Speech Generating Devices/Voice Prostheses subsection of the Therapy Services Chapter.

Documentation for modifications/upgrades must describe the changes in the beneficiary's physical, medical, cognitive, vision or hearing status that necessitates the need for the requested modifications/upgrades for the system or parts.

A video of the beneficiary using the SGD and/or eye control is a useful tool in establishing the beneficiary's ability to use either item, but is not required. The SLP may submit a video with the prior authorization request if all of the following are met:

- The beneficiary or beneficiary's legal guardian has dated and signed an authorization for the video documentation as additional documentation of the beneficiary's ability to use the device;
- The video is current (within the past 12 months); and
- The provider encrypts the video prior to sending it in with the prior authorization request (following HIPAA compliance regulations).

PA Requirements

The speech-language pathologist performs the functional communication assessment and SGD evaluation and initiates the prior authorization request with a medical supplier that has a specialty enrollment with MDHHS to provide SGDs. To improve beneficiary access to low-end devices, a medical supplier without a SGD specialty enrollment with MDHHS may provide SGDs with eight minutes or less of speech capability, basic SGD accessories such as switches, buttons, etc., or SGD wheelchair mounting systems. A SGD vendor must enroll through the MDHHS CHAMPS PE on-line system as a medical supplier with a subspecialty of Speech Generating Devices in order to provide the full range of SGDs. (Refer to the Directory Appendix for contact information.)

PA is required for all SGDs, eye control mechanisms, upgrades, modifications, accessories, repairs, replacements and device trials. Required documentation must accompany the Special Services Prior Approval—Request/Authorization (MSA-1653-B) when requesting authorization for all original and replacement/upgrade SGD requests.

A copy of the physician prescription must be submitted with the request for an SGD.

The prescription must be based on the evaluation of an individual's communication abilities and medical needs made by a speech-language pathologist and other evaluation team members (as appropriate).

Modifications/Upgrades

Indicate the procedure code that defines the modification(s) or upgrades.

Providers have six months from the prior authorization approval date to provide all approved items, including the SGD, mount and accessories. After six months, a new prior authorization request must be submitted.

Repairs - For a repair, report HCPCS code K0739 (for the labor charge) and HCPCS code E1399 (for the replacement part). PA is required for all repairs. If repair charges exceed $150, a speech-language pathologist, occupational therapist, or physical therapist must conduct an evaluation. A statement must be included in the evaluation indicating whether the current SGD continues to meet the beneficiary's functional needs. If the beneficiary's needs are being met with the current system, PA may be granted.

Each repair must consist of a thorough assessment of the general working condition of the entire system so that frequent repairs may be avoided. If additional repairs to the system are needed, PA for those additional services must be obtained.

In some cases, it may be more costly to repair the SGD than to replace it. When requesting PA for a repair, provide the cost of the repair and the cost of the replacement so that determination can be made by MDHHS whether to repair or replace the device.

Replacements - All replacements (identical, upgrades, downgrades) of an SGD require PA.

Follow-Up Services The provision of speech therapy services for training following the purchase of an SGD is expected to occur within the 12 months following the beneficiary’s receipt of the device. (Refer to the Therapy Services Chapter and the Medicaid Code and Rate Reference tool for PA and coverage parameters.) During this time, the SLP and SGD provider are required to ensure that a support team is in place to assist the beneficiary and/or their family with all follow-up SGD needs and therapy.

Frequency The program will purchase new equipment only. Only one SGD will be purchased within a three-year period for beneficiaries under age 21. Only one SGD will be purchased within five years for beneficiaries age 21 and older. Exceptions may be considered in situations where there has been a recent and significant change in the beneficiary's medical or functional status relative to the beneficiary's communication skills.

Warranty The warranty period begins at the point when the device is in the beneficiary's home and the beneficiary has received adequate training to use the system for functional communication.

Repairs Repairs for speech generating devices (SGD) are covered after the warranty expires for no more than one SGD per beneficiary. Additionally, repair of an SGD not purchased by MDHHS is covered only if the SGD is determined to be necessary to meet basic functional communication needs in accordance with the criteria for SGD coverage.

For a repair, report HCPCS code K0739 (for the labor charge) and HCPCS code E1399 (for the replacement part). PA is required for all repairs. If repair charges exceed $150, a speech-language pathologist, occupational therapist, or physical therapist must conduct an evaluation. A statement must be included in the evaluation indicating whether the current SGD continues to meet the beneficiary's functional needs. If the beneficiary's needs are being met with the current system, PA may be granted.

Each repair must consist of a thorough assessment of the general working condition of the entire system so that frequent repairs may be avoided. If additional repairs to the system are needed, PA for those additional services must be obtained.

In some cases, it may be more costly to repair the SGD than to replace it. When requesting PA for a repair, provide the cost of the repair and the cost of the replacement so that determination can be made by MDHHS whether to repair or replace the device.

Technological improvements and upgrades are not considered repairs and must not be requested as such.

The prior authorization request for repair must include:

- Documentation from the SLP (or if not currently receiving speech services, a physician, a PT or OT, or teacher) confirming the current device is used by the beneficiary on a regular basis and continues to meet the beneficiary’s needs;

- Part number(s), description(s), manufacturer name, Healthcare Common Procedure Coding System (HCPCS) codes; and

- Warranty information and catalog number(s) for the part number(s) to be used for the repair.

Repairs must extend the useful lifetime of the SGD by at least one year from the date of the repair request.

Replacements All replacements (identical, different, upgrades, downgrades) of an SGD require PA.

Replacements may be covered when there has been a significant medical/functional change in the beneficiary's ability to use the SGD, the device is no longer repairable, or the cost of repairs exceeds the cost of replacement. Limits for replacement are based on medical/functional need and the operating condition of the beneficiary's current device.

Manufacturer suggested replacement schedules are not considered a reason for replacement.

When a current SGD needs replacement and the replacement is **identical** to the SGD previously purchased by MDHHS, the documentation required to be submitted with the prior authorization request is:

- Clinical confirmation by the speech-language pathologist the device continues to be suitable for the beneficiary's needs;
- The SLP, OT or PT confirmation of the beneficiary's functional ability to use the SGD; and
- Cost to repair and cost to replace.

If an identical SGD is no longer available, a new unit that is equivalent to the original in function, utility and user adaptability will be furnished.

When a current SGD needs replacement with an SGD that is **different** than the SGD previously purchased by the program, the documentation to be submitted with the prior authorization is:

- A new speech and language evaluation; and
- A statement (to be included with the evaluation) indicating why and how the current SGD no longer meets the beneficiary's functional communication needs.

All other standards of coverage requirements must be met for coverage consideration.

Replacement requests due to loss, damage or theft must include the policy or fire marshal report, as applicable, and a plan to prevent recurrence. MDHHS does not cover replacement of SGDs due to misuse or abuse.

Payment Rules Purchase - MDHHS will purchase new equipment only. The serial number of the device purchased must be maintained on file by the vendor for audit purposes.

Shipping and handling fees relating to the SGD equipment are not separately reimbursed.

> Reimbursement includes the charges for the SGD and all approved components.
>
> The provider's charge for an SGD must be based on the usual and customary charge.
>
> Reimbursement will be the lesser of the provider's charge and/or the Medicaid fee screen.
>
> **Rental –** Equipment will not be rented for a period of less than 30 days and may be rented for a maximum period of 90 days. The monthly rental reimbursement rate will be 1/10 of the maximum purchase reimbursement. The amount reimbursed for rental will be deducted from the total purchase price.
>
> MDHHS will apply the trial period rental to the purchase of the SGD. For an SGD device(s) approved for a trial period and ruled out (by the SLP, the beneficiary and/or legal guardian, DME provider, etc.) at some point during the trial period (first, second or third month), MDHHS will reimburse the SGD provider for the period of time the device was trialed. (Refer to the Medical Supplier Database and the Medicaid Code and Rate Reference tool for specific HCPCS codes and rental rates.)
>
> *Medicaid Provider Manual*
> *Medical Supplier Chapter*
> *January 1, 2024, pp 93-101*
> *Emphasis added*

In addition to the above policies, Respondent has developed its own criteria for the use of out of network providers. (Exhibit A, pp 106-110). According to those criteria,

> **Out-of-network services**
>
> You must get most of your care from providers in our provider network. Member Services can help you find a provider in our network
>
> If we do not have a doctor or specialist in our provider network in your area who can give you the care you need, or if we do not hove a provider that can see you timely, we will get you the care you need from a provider outside our network This is called an out-of-network referral. We will only cover the services by an out-of-network provider if we are unable to provide a necessary and covered service in our network and if you have approval before your appointment We will coordinate payment with the out-of-network provider. We also ensure that the cost to you is no greater than it would be if the service was provided in-network.

****

> 44 Specialist Physicians and Other Participating Providers. Except as otherwise expressly stated in this Section 44 or other sections of this Certificate, the Member may receive Covered Services from Specialist Physicians and other Participating Providers. The Plan does not require authorization for most in-network Specialist Physician Services. In some circumstances, certain medical services, equipment and supplies are not covered or may require Prior Authorization by the Plan. Prior Authorization is required for most services provided out of the Plan's provider network. The Member may contact the Plan to obtain a list of services requiring Prior Authorization. If the Member does not obtain the necessary authorization from the Plan, the Member may be financially responsible for payment of medical services, equipment or supplies if notified by the provider prior to the service. A female Member may receive an annual well-woman examination and routine obstetrical and routine gynecological services from an obstetrician-gynecologist specialist who is a Participating Provider without Prior Authorization from the Primary Care Provider or the Plan. A pediatrician may be selected os the Primary Care Provider for a minor Member as indicated in Section 4.1. (Exhibit A, pp 108-110; Emphasis added).

Here, Respondent's witness testified that Petitioner's prior authorization request was denied pursuant to the above policies. More specifically, Respondent's witness indicated that the SGD was denied because the requested provider was out of network and there were in-network providers offering SGD's that could possibly meet Petitioner's needs. Respondent's witness indicated that its policy requires a trial and failure with in-network SGD's before an out of network SGD can be approved. Respondent's witness indicated that this is consistent with Medicaid policy which indicates that an evaluation of a SGD must contain an assessment of the beneficiary using more than one SGD, from more than one manufacturer, which did not occur here.

Petitioner's Speech/Language Pathologist (SLP) reviewed the information that he outlined in the letter of medical necessity provided with the initial prior authorization request and throughout this appeal. (See Exhibit A, pp 55-56). Petitioner's SLP did admit, however, that while he believed the alternative devices from in-network providers would not work for Petitioner, he did not evaluate Petitioner on those devices or on more than one device, as required by policy.

Petitioner bears the burden of proving by a preponderance of the evidence that the Respondent erred in denying the prior authorization request. Given the record and applicable policies in this case, Petitioner has failed to meet this burden of proof so Respondent's decision must be affirmed.

As indicated above, Respondent may require beneficiaries to first consider in-network providers for durable medical equipment before approving out of network providers. Policy also requires that a beneficiary be assessed on more than one SGD, by more

than one manufacturer before a SGD can be approved. Here, while Petitioner's SLP does have legitimate concerns regarding the potential effectiveness of the SGD's from in-network providers, he has not actually evaluated Petitioner on those devices. Given that policy requires such an evaluation, Petitioner's request must be denied. Once that evaluation is conducted, and if Petitioner's SLP still believes that the requested device better meets Petitioner's specific medically necessary needs, a new prior authorization request can be submitted according to the above policy.

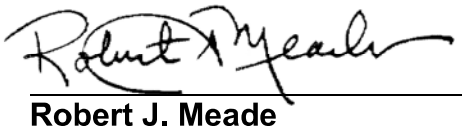
Therefore, given the above findings of fact and conclusions of law, Respondent's decision was proper and must be affirmed.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, decides that the Respondent properly denied Petitioner's prior authorization request.

IT IS, THEREFORE, ORDERED that:

The Respondent's decision is **AFFIRMED.**



RM/sj

Robert J. Meade
Administrative Law Judge

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

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 13th day of September 2024.

S. James

S. James
Michigan Office of Administrative Hearings and Rules

Via Electronic Mail:

Community Health Representative
Molina Healthcare of Michigan
Lisa Johnson
Troy, MI 48098
Lisa.Johnson@molinahealthcare.com

DHHS Department Contact
MDHHS Managed Care Plan Division
Lansing, MI 48933
MDHHS-MCPD@michigan.gov

Via First Class Mail:

Petitioner
[redacted]
[redacted] MI [redacted]