

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION
OFFICE OF FAIR HEARINGS



FILED

Feb 15, 2023, 10:02 am
OFFICE OF FAIR HEARINGS

[REDACTED],

PETITIONER,

AHCA Case No.: 23-FH0122

Plan ID No.: [REDACTED]

vs.

CHILDREN'S MEDICAL SERVICES

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned Hearing Officer convened a requested expedited telephonic Fair Hearing on the instant case on February 10, 2023, at 2:30 p.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner

For the Respondent:

Christian Pacheco
Children's Medical Services

STATEMENT OF ISSUE

The issue is whether Petitioner proved by a preponderance of the evidence that Respondent's denial of durable medical equipment ("DME") (custom group 3 power wheelchair) for the Petitioner was incorrect.

PRELIMINARY STATEMENT

All parties appeared for the Fair Hearing telephonically. Petitioner, by and through [REDACTED] [REDACTED], as the Designated Authorized Representative (“DAR”), appeared at the Fair Hearing to provide testimony. The following also appeared as witnesses for Petitioner: Ms. Amanda Guevara, PT, DPT, the Petitioner’s physical therapist; Mr. James Wiese, ATP, National Seating and Mobility, Inc., a power wheelchair vendor; and Dr. Eric Loveless, M.D. (“Dr. Loveless”), a pediatric surgeon who has been treating the Petitioner for several years. Also called to testify by the Petitioner, was Ms. Grace Williams, of Children’s Medical Services Health Plan, the Petitioner’s currently assigned Case Manager.

Mr. Christian Pacheco, the Fair Hearing Coordinator for Children’s Medical Services Health Plan (“CMS”) appeared for the Fair Hearing as a representative for Respondent. In addition, Dr. Maria Samerson, Corporate Medical Director for CMS testified on the Respondent’s behalf.

The following individuals were also present at the Fair Hearing for observation purposes only: Stephanie Holder, Chief Management Supervisor for CMS; Anita Melton, Ombudsman for CMS; Chantal Pierre, CMS, Dr. Mansoorah Salary, CMS; Samira Jean-Louis, Occupational Therapist, CMS; Nicholas Crosby, Physical Therapist, CMS; Dr. Andrew Metinko, Medical Director for CMS; Chrissie Simmons, Medical Health Program Analyst at the Agency for Healthcare Administration (“AHCA”); and Laura Gallagher, Esq., Chief Fair Hearing Officer for AHCA.

The Petitioner introduced 4 exhibits at the Fair Hearing that were admitted into evidence without objection and consist of the following: Petitioner’s Exhibit 1 consisting of a [REDACTED] letter and attachment from Mr. James Wiese, ATP of National Seating and Mobility, Inc., and a [REDACTED], letter from Dr. Carl Loveless, M.D. from [REDACTED] [REDACTED], recorded in the Office of Fair Hearings (“OFH”) document management

system and designated as file “23-FH0122 DAR & Supporting Documents.pdf”; Petitioner’s Exhibit 2, consisting of a 1 page transmittal e-mail from the Petitioner attaching a 1 page e-mailed [REDACTED], e-mail from Ms. Cindy Harris Pearce, M. Ed., [REDACTED], who is the Petitioner’s school teacher going on [REDACTED] consecutive years, both recorded in the OFH document management system and designated as file “23-FH0122 Additional Note.pdf”; Petitioner’s Exhibit 3, consisting of a 2 page [REDACTED], letter from Ms. Lauren Meffen of [REDACTED] recorded in the OFH document management system and designated as file “23-FH0122 Additional Supporting Evidence.pdf”; and Petitioner’s Exhibit 4, consisting of a [REDACTED], letter from Ms. Amanda Guevara, PT, DPT, of [REDACTED] [REDACTED] and recorded in the OFH document management system and designated as “WZ Letter #3 from PT.pdf”.

Prior to the Fair Hearing, Respondent sent to the Office of Fair Hearings and Petitioner a 546-page evidence packet, which was admitted into evidence without objection and identified as Respondent’s Composite Exhibit 1, recorded in the OFH document management system as “MFH Packet [Petitioner Surname].pdf”.

FINDINGS OF FACT

1. Petitioner is an enrolled member of CMS since [REDACTED], for the Medicaid (MMA) line of business. See Respondent’s Composite Exhibit 1, page 2. CMS is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in the state of Florida under the age of 21 years old.
2. As of the date of the Fair Hearing, Petitioner is [REDACTED] ([REDACTED] years old and resides in a home with [REDACTED] parents. *Id.* at 34. Petitioner’s current health conditions were caused by a history of

[REDACTED]. *Id.* at 110. The Petitioner's primary health diagnosis is [REDACTED]

[REDACTED]. *Id.* at 90.

3. Per clinical documentation, the Petitioner is [REDACTED] [REDACTED] *Id.* at 91. In addition, the Petitioner suffers from [REDACTED] [REDACTED]. See Petitioner's Exhibit 1 and Testimony of Dr. Loveless.

4. The Petitioner is [REDACTED] [REDACTED]. See Respondent's Composite Exhibit 1, page 72 and 119. The Petitioner's current wheelchair is manual, in poor shape, is beyond repair, and the wheelchair no longer accommodates the Petitioner due to [REDACTED] [REDACTED] growth. See Respondent's Composite Exhibit 1 pages 90 and 119. The Petitioner is [REDACTED] [REDACTED] See Respondent's Composite Exhibit 1, page 121. In addition, Petitioner has for over [REDACTED] has been using a [REDACTED] [REDACTED] [REDACTED]. See Respondent's Composite Exhibit 1, page 71 and Petitioner's Exhibits 2.

5. On [REDACTED] the Petitioner requested a K0861 Group 3 power wheelchair, multiple power option, sling/solid seat/back, patient weight capacity up to and including 300 pounds, Motion Concepts Rovi X3 and accessories including power tilt, power recline, power

standing, and power seat height elevator features. See Respondent's Composite Exhibit 1, Notice of Adverse Benefit Determination, pages 4 through 9.

6. On December 2, 2022, the Respondent issued their Notice of Adverse Benefit Determination wherein the Petitioner's request for a K0861 Group 3 power wheelchair was denied and stated as follows:

We made our decision because:

(Check all boxes that apply)

- We determined that the requested services are **not medically necessary** because the services do not meet the reason(s) checked below: (See Rule 59G-1.010).
- Must be needed to protect your child's life, prevent significant illness or disability to your child, or to alleviate your child's severe pain.
- Must be individualized, specific, consistent with symptoms or diagnosis of illness or injury and not be in excess of your child's needs.
- Must meet accepted medical standards and not be experimental or investigational.
- Must be able to be the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide.
- Must be furnished in a manner not primarily intended for convenience of the recipient, caretaker, or provider.
- (The convenience factor is not applied to the determination of the medically necessary level of private duty nursing (PDN) for children under the age of 21.)*
- The requested **service is not a covered benefit.**
- Other authority:**

The facts that we used to make our decision are: Florida Medicaid Durable Medical Equipment and Medical Supply Services Coverage and Limitations Handbook.

Centene Clinical Policy on Durable Medical Equipment, CP.MP.107. InterQual 2022: April 2022 Release, CP: Durable Medical Equipment, Wheelchairs, Power, Payment Policy: Wheelchairs and Accessories, Reference Number: CC.PP.502, Product Types: All, Last Review Date: 09/2020. These services have also been reviewed under EPSDT (Early and Periodic Screening, Diagnostic and Treatment).

Rationale: The request for durable medical equipment (any medical needed equipment used in the home and to help with a better quality of life); K0861 power wheelchair (a wheeled device with a motor that lets a person move around by controlling movement of wheelchair), group 3 standard, multiple power option, sling/solid seat/back, patient weight capacity up to and including 300 pounds x1 (Motion Concepts Rovi X3 and accessories including power tilt, power recline, power standing, and power seat height elevator features) is being denied due to a lack of medical necessity (need). The submitted clinical documentation (notes) does not identify and explain specific mobility related activities of daily living (personal care activities including but not limited to tasks such as toileting, eating, dressing, grooming, and bathing), or primary role functions that will be achieved with the requested wheelchair base that could not be attained with an alternative custom power mobility device. The requested power seat elevator and power standing features are considered a convenience items, are not primarily medical in nature, and therefore not considered medically necessary. It is unclear if your child successfully completed a trial of the requested power wheelchair and was able to safely and efficiently operate a power wheelchair. Additionally, there was no documentation noting that a Rehabilitation Engineering and Assistive Technology Society of North America - certified Assistive Technology Professional (a special certification for professionals working in seating and mobility) had direct face-to-face patient involvement with your child for the selection of the requested power wheelchair.

See Respondent's Composite Exhibit 1, Notice of Adverse Benefit Determination, pages 4 through 9.

7. On December 14, 2022, the Petitioner timely requested a plan appeal. See Respondent's Composite Exhibit 1, Notice of Plan Appeal Resolution, Pages 84 through 87. On December 22, 2022, the Respondent denied the Petitioner's appeal to acquire a K0861 Group 3 power wheelchair. The Respondent's rationale upholding the denial of the Petitioner's requested wheelchair was stated as follows:

The facts that we used to make our decision are: the previous denial to authorize a Power wheelchair and accessories including power tilt, power recline, power standing, and power seat height elevator features is upheld based on a lack of documented medical necessity. Submitted clinical documentation does not identify and explain specific activities of daily living, or primary role functions that will be achieved with the requested wheelchair base that could not be attained with an alternative custom power mobility device. There was no documentation noting that a RESNA-certified Assistive Technology Professional (ATP) had direct face-to-face patient involvement with the member for the selection of the requested power wheelchair. The submitted power wheelchair assessment contains no objective description of member's strength, range of motion, balance, and functional mobility. Criteria: CP.MP.107, FLORIDA MEDICAID DURABLE MEDICAL EQUIPMENT AND MEDICAL SUPPLY SERVICES COVERAGE AND LIMITATIONS HANDBOOK, InterQual 2022, Apr. 2022 Release, CP: Durable Medical Equipment, Wheelchairs, Power, Payment Policy: Wheelchairs and Accessories, Reference Number: CC.PP.502, Product Types: All, Last Review Date: 09/2020. This decision was made with regards to EPSDT. The reasons for this decision are based on a set of standards. This included not medically necessary.

8. On January 13, 2023, the Petitioner requested a Fair Hearing before ACHA to review the Respondent's denial of the requested K0861 Group 3 power wheelchair. See OFH January 23, 2023, Acknowledgment. A Fair Hearing was scheduled to occur on March 3, 2023, but on February 7, 2023, the Petitioner requested an expedited Fair Hearing which was granted by this Hearing Officer. A Fair Hearing in this matter occurred on an expedited basis on Friday, February 10, 2023.

9. Mr. James Wiese, ATP of National Seating and Mobility in [REDACTED] testified at the hearing that he evaluated the Petitioner for a K0861 Group 3 power wheelchair and performed a test at the Petitioner's home to see how the Petitioner and [REDACTED] caretakers operated the Group 3 power wheelchair, both inside and outside the home, including the Petitioner's wheelchair adapted van.

See also Petitioner's Exhibit 1. The Group 3 power wheelchair that was demonstrated at the Petitioner's home was done in 1 day and while the wheelchair had remote controls for the caregiver to operate it remotely, the demonstration wheelchair did not have any "eye gaze" control device installed. In his testimony, James Wiese stated that only a Group 3 power wheelchair, versus a Group 2 power wheelchair, can be fitted with an eye gaze controller and that in his opinion, the custom Group 3 power wheelchair with eye gaze control was medically necessary for the Petitioner. *See* Respondent's Composite Exhibit 1, page 117.

10. Dr. Loveless testified at the February 10, 2023, Fair Hearing that in his opinion, the Group 3 power wheelchair with eye gaze control, along with a sling/solid seat/back, patient weight capacity up to and including 300 pounds, including power tilt, power recline, power standing, and power seat height elevator features was medically necessary for the Petitioner. *See also* Petitioner's Exhibit 1.

11. Ms. Lauren Meffen of [REDACTED] stated in her letter to the Petitioner that a power wheelchair with eye gaze control was necessary and appropriate for the Petitioner. *See* Petitioner's Exhibit 3.

12. Ms. Amanda Guevara, PT, DPT, is the Petitioner's current physical therapist and testified at the hearing that she sees the Petitioner approximately 2 or 3 times per week and that it is her opinion that a Group 3 power wheelchair was medically necessary for the Petitioner.

13. Ms. Grace Williams is the Respondent's Case Manager that is assigned to assist the Petitioner and testified at the Fair hearing that the Petitioner has outgrown [REDACTED] current manual wheelchair and that the transfers in and out of the current wheelchair are dangerous and present

a true risk for injury. Ms. Williams also testified that if the Petitioner does not obtain a new power wheelchair, the Petitioner's independence, quality of life and safety would suffer.

14. In their testimony, the Respondent at no time stated that a new power wheelchair for the Petitioner was not medically necessary.

CONCLUSIONS OF LAW

15. The Agency's Office of Fair Hearings has jurisdiction over the subject matter of this proceeding and the parties pursuant to section 409.285(2) of the Florida Statutes (2019). This order is the final administrative decision of AHCA under Fla. Stat. § 409.285(2)(a).

16. This hearing was held as a *de novo* proceeding pursuant to Florida Administrative Code Rule ("Fla. Admin. Code R.") 59G-1.100(17)(b).

17. Because Petitioner is requesting a new service, Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to Petitioner. The standard of proof in an administrative hearing is a preponderance of the evidence. The preponderance of the evidence standard requires proof by "the greater weight of the evidence" (Black's Law Dictionary at 1201, 7th Ed.).

18. States must provide Early and Periodic Screening, Diagnostic, and Treatment ("EPSDT") services to Medicaid-eligible children under age 21 when requested under the Medicaid state plan. See 42 U.S.C. § 1396a(a)(43); 42 U.S.C. § 1396d(a)(4). According to 42 U.S.C. § 1396d(r)(5), EPSDT services mean, in relevant part, the following items and services:

Such other necessary health care, diagnostic services, treatment, and other measures described in subsection (a) of this section to correct or ameliorate defects and physical and mental illness and conditions discovered by the screen services, whether or not such services are covered under the state plan.

19. A state may place medical necessity limitations on EPSDT services. *See* 42 C.F.R. §§ 440.230(a), (b), (d). Section 409.905(2), Florida Statutes, limits EPSDT services with a medical necessity standard:

The [Agency] shall pay for early and periodic screening and diagnosis of a recipient under age 21 to ascertain physical and mental problems and conditions and all services determined by the agency to be medically necessary for the treatment, correction, or amelioration of these problems and conditions, including personal care, private duty nursing, durable medical equipment, physical therapy, occupational therapy, speech therapy, respiratory therapy, and immunizations.

20. Petitioner is a Medicaid recipient who is under 21 years of age. Thus, the provisions of the EPSDT program apply to the request for a **custom power wheelchair** in this case.

21. Petitioner's requests for DME are governed by the Florida Medicaid Durable Medical Equipment and Medical Supply Services Coverage and Limitations Handbook (July 2010) ("DME Handbook"), which is incorporated by reference in Fla. Admin. Code R. 59G-4.070. The DME Handbook provides the following, in pertinent part:

Purpose

The purpose of the DME and Medical Supply Services Program is to promote, maintain, or restore health and minimize the effects of illness, disability, or a disabling condition.

Durable Medical Equipment (DME)

Durable medical equipment (DME) is defined as medically-necessary equipment that can withstand repeated use, serves a medical purpose, and is appropriate for use in the recipient's home as determined by the Agency for Health Care Administration (AHCA).

...

Service Criteria

All DME, medical supplies, and orthotics and prosthetic devices must be:

- **Medically necessary**, and
- Functionally appropriate for the individual recipient, and
- Adequate for the intended medical purpose, and
- For conventional use, and
- For the exclusive use of the recipient.

DME items requested or supplied must not duplicate or perform the same function as other DME equipment or medical supplies currently in the recipient's possession

...

Medical Necessity

Medicaid reimburses for services that do not duplicate another provider's service and are determined to be medically necessary. Per 59G-1.010, F.A.C., to be medically necessary, services must meet the following conditions:

- Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe pain;
- **Be individualized, specific and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs;**
- Be consistent with generally accepted professional medical standards as determined by the Medicaid program and not experimental or investigational;
- Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide; and
- Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider.

The fact that a provider has prescribed, recommended, or approved medical or allied care, goods, or services does not, in itself, make such care, goods or services medically necessary or a medical necessity or a covered service.

...

WHEELCHAIRS

Description: A wheelchair is a seating device system mounted on wheels used to transport a non-ambulatory individual or an individual with severely limited mobility.

Service Requirements: Medicaid will reimburse for a wheelchair when the recipient is non-ambulatory or has severely limited mobility and it is medically documented that a wheelchair is medically necessary to accommodate the recipient's physical characteristics.

Medicaid will reimburse and provide maintenance for only one wheelchair (regardless of type) or power operated vehicle (POV) procedure code per recipient, per maximum limit period, as stated in the DME and Medical Supply Services Provider Fee Schedule.

The following types of wheelchairs and POVs devices require prior authorization:

- Customized manual wheelchairs,
- **Customized power wheelchairs,**
- Non-custom power wheelchairs,
- Motorized scooters (POV), and
- Power Conversion kits.

Note: See the DME and Medical Supply Services Provider Fee Schedules for the maximum limits

Categories of Wheelchairs: Medicaid reimburses the following categories of wheelchairs:

- Narrow wheelchair required due to narrow doorways in the home;
- Lightweight wheelchair required when the recipient cannot propel a standard wheelchair;
- Wide, heavy-duty wheelchair for recipients whose measurements or body weight require a wider and more durable wheelchair;
- Amputee wheelchair required for recipients with a missing limb(s);
- Motorized wheelchair required when medical needs cannot be met by a less costly alternative;
- Other model(s) if the features and accessories are medically necessary; and
- **Customized wheelchair that is specially constructed for the individual recipient and not otherwise available from manufacturers.**

...

A power-operated vehicle (POV) requires prior authorization. The following criteria must be met for a POV:

- Recipient's medical necessity requires the use of a POV to independently move around his residence; and Recipient is physically unable to operate a manual wheelchair; and Recipient is capable of safely and independently operating the controls for the POV requested; and
- Recipient can transfer safely in and out of the POV and has adequate trunk stability to be able to safely ride in the POV; and
- An independent licensed physical therapist, occupational therapist or physiatrist has determined and documented his recommendation of the most appropriate and medically-necessary POV to meet the recipient's individual mobility needs;

...

Customized Wheelchair Documentation: Medicaid will reimburse for a medically-necessary, customized wheelchair that is specially constructed for the individual recipient.

Medicaid will not approve a customized wheelchair or wheelchair custom upgrade without the medical necessity documentation that establishes the recipient's inability to perform activities of daily living within the recipient's home. Activities of daily living include bathing, eating, toileting, dressing, transferring in and out of a bed or chair, and moving about within the home.

...

- Has documented, severe abnormal upper extremity dysfunction or weakness; and
- **Has demonstrated that he possesses sufficient eye and hand perceptual capabilities and the cognitive skills necessary to safely operate and guide the chair or POV independently, and is capable of evacuating a residence or building with minimal or no verbal prompting in case of an emergency; and**
- Currently resides in or will primarily use the equipment in an environment conducive to the use of a motorized wheelchair of the type and size wheelchair requested.
- Clinical documentation of a power wheelchair trial, supervised by an independent licensed physical therapist or occupational therapist or physiatrist, must accompany any first request for a custom power wheelchair. Documentation of the recipient's current activities of daily living capabilities, ambulation, and transfer skills must also be included in the physical therapist's, occupational therapist's, or the physiatrist's clinical documentation.

...

Prior authorization is required for all custom wheelchairs, power wheelchairs, power operated vehicles (POV), and modifications and custom upgrades. The following information must be submitted with the prior authorization request:

- Either the Medicaid Custom Wheelchair Evaluation form (Appendix A) or another document that contains the same information that is requested on the form; and
- Medical necessity documentation; and
- Written documentation describing the physical status of the recipient with regard to mobility, self-care status, strength, cognitive and physical abilities, coordination, and activity limitations; and
- Wheelchair evaluations must be performed by and the evaluation information completed by or dictated by a registered physical or occupational therapist or a certified physiatrist and documented on either the Custom Wheelchair Evaluation, AHCA Med Serv Form 015, July 2007 (Appendix A) or another document that contains the same information that is requested on the form. The documentation must list a date of completion that is not more than six (6) months old and include the therapist's or physiatrist's signature and license number; and

- Discussion of the recipient’s current mobility equipment and why the current equipment is no longer appropriate; and What physical improvement(s) can be anticipated; and What physical deterioration may be prevented with the type of wheelchair and specific features requested; and Listing of each customized feature required for unique physical status; and Specification of the medical benefit of each customized feature requested; and Identification of the principle place(s) the wheelchair will be used; and Itemized provider invoice, listing the provider’s price requested for parts and labor (labor is included in the cost of the initial fabrication of a custom wheelchair or custom components); and
- List the source(s) for the accessories and modifications requested and the manufacturer’s suggested retail price for each item that is not described by a procedure code with a scheduled fee on the DME and Medical Supply Services Provider Fee Schedule; and
- Itemized invoice listing provider’s source of accessory and modification parts and manufacturers suggested retail pricing (MSRP) for the parts, and listing the procedure codes and scheduled fees for the components that are described on the DME and Medical Supply Services Provider Fee Schedule; and
- Documentation of the recipient’s home accessibility for the customized manual or motorized wheelchair requested; and
Measurements of the recipient; and Weight of recipient; and
Measurements of all exterior doorways of the recipient’s residence; and
Measurements of all interior doorways of the recipient’s residence to be used by the recipient; and
- Documentation that the requested equipment is the least costly alternative to meet the recipient’s needs must be available upon request.

...

Documentation Required for Motorized or Power Wheelchair and Power-Operated Vehicle (POV)

Medicaid will not approve a power wheelchair (custom or non-custom), power-operated vehicle (POV), or wheelchair power upgrade, without documentation from an independent licensed physical therapist or occupational therapist or physiatrist, which documents the recipient’s inability to perform activities of daily living in the home and the medical consequences that will occur without the equipment requested.

When a motorized wheelchair (custom or non-custom) or power-operated vehicle is prescribed, the documentation must state that the recipient has successfully demonstrated his consistent ability to safely and independently operate a powered mobility device or wheelchair.

...

Service Requirements

Service Requirements: A power-operated vehicle (POV) requires prior authorization. The following criteria must be met for a POV:

- Recipient's medical necessity requires the use of a POV to independently move around his residence; and
- **Recipient is physically unable to operate a manual wheelchair; and**
- Recipient is capable of safely and independently operating the controls for the POV requested; and
- Recipient can transfer safely in and out of the POV and has adequate trunk stability to be able to safely ride in the POV; and
- An independent licensed physical therapist, occupational therapist or physiatrist has determined and documented his recommendation of the most appropriate and medically-necessary POV to meet the recipient's individual mobility needs; and
- The recipient does not have a wheelchair that was purchased by Medicaid within the past five years.

(Emphasis added.)

22. Section 2.83 of the Definitions Policy, incorporated by reference into Fla. Admin. Code R.

59G-1.010, defines "medically necessary" or "medical necessity" as follows:

The medical or allied care, goods, or services furnished or ordered must meet the following conditions:

- Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe pain
- Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs
- Be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational
- Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide
- Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider

Accordingly, all five (5) of the conditions must be met in order for Respondent to approve requested DME services. See *supra* ¶ 18.

19. Petitioner requested DME (custom power wheelchair) and submitted a wheelchair evaluation and medical records in support of the request. *See supra* ¶ 5. In the NABD and in the NPAR, Respondent denied Petitioner’s request for DME (custom power wheelchair) upon review of Petitioner’s submitted documentation, and the Clinical Guidelines for Custom Powered Wheelchairs. *See supra* ¶ 5-7. Respondent explained that Petitioner’s request was not medically necessary due to certain requested custom accessories/features/add-ons being more than what the Petitioner needs. *See supra* ¶ 5-8.

23. In the instant case, Petitioner requested a K0861 Group 3 power wheelchair, multiple power option, sling/solid seat/back, patient weight capacity up to and including 300 pounds, Motion Concepts Rovi X3 and accessories including power tilt, power recline, power standing, and power seat height elevator features. *See supra* ¶ 5.

20. Lastly, the record reflects that Petitioner’s DME provider (National Seating & Mobility, Inc.) submitted a Prior Authorization form, requesting prior authorization for the subject DME (custom power wheelchair). *See supra* ¶ 2. However, the submission of the pre-authorization form, *prima facie*, does not make the requested dental service a covered service. The Florida Medicaid program mandates that “[t]he fact that a provider has prescribed, recommended, or approved medical or allied care, goods, or services does not, in itself, make such care, goods or services medically necessary or a medical necessity or a covered service.” *See* ¶ 13-15. Therefore, the Prior Authorization form does not, in itself, make the requested DME (custom power wheelchair) medically necessary. However, the undersigned Hearing Officer finds that the documentation submitted in this matter by Mr. James Wiese, ATP, did not satisfy the requirements for a customized K0861 power wheelchair as provided within the Florida Medicaid

Durable Medical Equipment and Medical Supply Services Coverage and Limitations Handbook (July 2010) (“DME Handbook”), which is incorporated by reference in Fla. Admin. Code R. 59G-4.070.


21. Upon consideration of the testimony provided by both parties at the Fair Hearing, documentary evidence submitted, and applicable policies, the undersigned Hearing Officer concludes that Petitioner did prove by a preponderance of the evidence that the requested DME (custom power wheelchair) may be medically necessary. However, there is no evidence in this matter that the Petitioner has successfully demonstrated [REDACTED] consistent ability to safely and independently operate a K0861 Group 3 power wheelchair with an eye gaze controller as required by the Florida Durable Medical Equipment and Medical Supply Coverages and Limitations Handbook. In addition, the request for a custom K0861 Group 3 power wheelchair did not meet the documentation requirements as required by Florida Medicaid Durable Medical Equipment and Medical Supply Services Coverage and Limitations Handbook (July 2010) (“DME Handbook”). See supra ¶ 20.

22. Looking at all of the evidence relevant to the particular needs of Petitioner, Petitioner did not demonstrate that the requested power wheelchair and associated features at issue in this case is necessary “health care, diagnostic services, treatment, and other measures . . . to correct or ameliorate defects and physical and mental illness and conditions discovered by the screen services.” In light of the both parties’ testimony, the documents submitted, the DME Policy, and the Definitions Policy, the undersigned finds that Petitioner did not prove by a preponderance of the evidence that Respondent’s denial of DME (custom power wheelchair) was incorrect.

IT IS THEREFORE ORDERED AND ADJUDGED:

Respondent's denial of DME (custom power wheelchair) is hereby **AFFIRMED**. Petitioner's appeal based on Respondent's denial is hereby **DENIED**.

DONE and ORDERED this 15th day of February, 2023, in Tallahassee, Leon County, Florida.

 Joseph Mabry
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ALAN LEIFER, Hearing Officer
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NOTICE OF A RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW, WHICH SHALL BE INSTITUTED BY FILING THE ORIGINAL NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A COPY, ALONG WITH THE FILING FEE PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE RENDITION OF THE ORDER TO BE REVIEWED.

Copies Furnished To:



Children's Medical Services Plan, Inc.
CMSPlanContract@flhealth.gov

AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com.