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**STATE OF NEW JERSEY**
**DEPARTMENT OF HUMAN SERVICES**
**DIVISION OF MEDICAL ASSISTANCE**
**AND HEALTH SERVICES**

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| C.R., | : | |
| PETITIONER, | : | **ADMINISTRATIVE ACTION** |
| v. | : | **FINAL AGENCY DECISION** |
| AMERIGROUP, | : | **OAL DKT. No. HMA 05703-2023** |
| RESPONDENT. | : | |

As Assistant Commissioner for the Division of Medical Assistance and Health Services (DMAHS), I have reviewed the record in this case, including the Initial Decision and the Office of Administrative Law (OAL) case file. No exceptions were filed in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is January 29, 2024 in accordance with an Order of Extension.

This matter arises from Amerigroup's December 29, 2022, decision to deny Petitioner's request for Durable Medical Equipment (DME)[1] specifically, the Rifton Activity Chair with Hi/Lo base ("activity chair"). R-4. Petitioner appealed Amerigroup's decision through Amerigroup's Internal Appeal process. On February 15, 2023, Amerigroup

[1] DME is an item or apparatus that is primarily or customarily prescribed to serve a medical purpose and is medically necessary for the beneficiary for whom requested; is generally not useful to a beneficiary in the absence of a disease, illness, injury, or disability; and is capable of withstanding repeated use (durable) and is nonexpendable. N.J.AC. 10:59-1.2.

upheld their original decision which denied the request for DME as not medically necessary. R-5.

Petitioner is an 8-year-old female who was diagnosed with trisomy 13 and seizure disorder. R-6. At the age of 2, Petitioner's former healthcare provider determined an activity chair was medically necessary.[2] Petitioner has not received a replacement activity chair and has now outgrown the smaller chair. In a letter dated May 4, 2023, M.A. Petitioner's Physical Therapist, outlined why the activity chair was recommended and how Petitioner would continue to benefit by receiving a larger version of the chair. P-1. M.A. explained the following: 1) Petitioner's condition results in severe physical, neurological and cognitive impairments, 2) Petitioner is non-ambulatory, nonverbal and completely dependent for all transfers, dressing and hygiene needs and exhibits no transitional mobility skills, 3) Petitioner has poor head and trunk control and without a tilt feature in the chair would be unable to intermittently reach for items she can see, 4) Petitioner's sitting posture consists of posterior pelvic tilt, rounded shoulders, forward head posture and flexed forward trunk, 5) Petitioner is unable to maintain a neutral cervical position since her chin rests on her chest when she does not have appropriate seating that has the ability to recline and tilt to maintain proper head and trunk positioning and prevent the risk of recurrent skin breakdown, and 6) without proper support, Petitioner is at risk of poor head positioning which could lead to choking, difficulties in breathing and ischial pressure wounds. Ibid.

Two witnesses testified during the Office of Administrative Law hearing. The first witness, K.M., M.D., of Elevance Health, parent company of Amerigroup, testified that she conducts utilization reviews for DME requests. K.M testified that the activity chair

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[2] United Healthcare was Petitioner's healthcare provider when the Hi/Lo Activity Chair was approved and deemed medically necessary.

requested by Petitioner was duplicative and not medically necessary because Petitioner already had an adaptive stroller to meet her needs. K.M. testified that the activity chair "could be helpful and provide a benefit beyond comfort and convenience, but only in the absence of the previously approved adaptive stroller." K.M. further testified she did not know why Petitioner had been previously approved for an activity chair and pointed out that the needs of a two-year-old versus an eight-year-old could be very different. Lastly, K.M. testified that cost was not a factor in the denial which was based on Petitioner's needs and clinical guidelines determining the activity chair was not medically necessary.

The second witness, M.R., is Petitioner's mother. M.R. testified that Petitioner is tube fed, requires breathing support and assistance with dressing, bathing and being transferred in and out of her chairs. M.R. also testified that Petitioner currently has two DME devices, the adaptive stroller and activity chair. M.R. testified that the adaptive stroller was used only for transportation and the activity chair was used in the home. Finally, M.R. testified that Petitioner has outgrown the activity chair that was approved by United Healthcare and is no longer being used.

The Administrative Law Judge (ALJ) determined that both witnesses were credible, but determined that K.M. failed to provide an adequate explanation why it would not be beneficial for Petitioner to have the same DME that was previously approved by United Healthcare, and that Petitioner currently has access to while in school. As for M.R., the ALJ determined that she was able to articulate her experiences with using both the activity chair and adaptive stroller and was able to explain that Petitioner would continue to benefit by having an activity chair at home. In addition, the ALJ determined that Maximus, an organization that provides independent external reviews of adverse determinations, seemed to justify its decision to deny the activity chair based on an incorrect notion that the activity chair would be used to transport Petitioner which never occurred because

Petitioner was only transported by using the adaptive stroller. Lastly, while the ALJ did note the complexities involved in determining whether a DME was medically necessary, he ultimately determined that the activity chair was medically necessary and that Petitioner would benefit from having an activity chair to improve or maintain her health and perform basic tasks. I agree. Petitioner has provided sufficient evidence to support a finding of medical necessity for the activity chair that would meet her needs.

The Division of Medical Assistance and Health Services (DMAHS) has promulgated rules regarding coverage as well as rules regarding non-coverage for various inpatient and outpatient services. N.J.A.C. 10:52-1.8(a). Non-covered services include "any service or item which is not medically necessary for the prevention, diagnosis, palliation, rehabilitation or treatment of a disease, injury, or condition." N.J.A.C. 10:52-1.8(a)3(i).

"Medically necessary services" is defined in N.J.A.C. 10:74-1.4 as:

> Services or supplies necessary to prevent, diagnose, correct, prevent the worsening of, alleviate, ameliorate, or cure a physical or mental illness or condition; to maintain health; to prevent the onset of an illness, condition, or disability; to prevent or treat a condition that endangers life or causes suffering or pain or results in illness or infirmity; to prevent the deterioration of a condition; to promote the development or maintenance of maximal functioning capacity in performing daily activities, taking into account both the functional capacity of the individual and those functional capacities that are appropriate to individuals of the same age; to prevent or treat a condition that threatens to cause or aggravate a handicap or cause physical deformity or malfunction, and there is no other equally effective, more conservative or substantially less costly course of treatment available or suitable for the enrollee. The services provided, as well as the treatment, the type of provider and the setting, are reflective of the level of services that can be safely provided, are consistent with the diagnosis of the condition and appropriate to the specific medical needs of the enrollee and not solely for the convenience of the enrollee or provider of service and in accordance with standards of good medical practice and generally recognized by the medical scientific community as effective. Course of treatment may include mere observation or, where appropriate, no treatment at all. Experimental services or services generally regarded by the medical profession as unacceptable treatment are deemed not medically necessary. Medically necessary services provided are based on peer-reviewed publications, expert pediatric, psychiatric, and medical opinion, and medical/pediatric

> community acceptance. In the case of pediatric enrollees, this definition applies, with the additional criteria that the services, including those found to be needed by a child as a result of a comprehensive screening visit or an inter-periodic encounter, whether or not they are ordinarily covered services for all other Medicaid/NJ Family Care enrollees, are appropriate for the age and health status of the individual and that the service will aid the overall physical and mental growth and development of the individual and the service will assist in achieving or maintaining functional capacity.

Elevance's health policy Clinical UM Guideline CG-DME-10 ("CG-DME-10"), provides general principles used to determine the medical necessity for DME. R-1. The applicable parts of the policy state that the DME must be medically necessary for the individual's specific clinical situation, appropriate and prescribed by the primary care physician or a specialist, and "not primarily for the convenience of the individual, physician, caregiver, or other health care provider." Ibid. The policy also provides that a DME would not be medically necessary if the item is duplicative equipment intended to be used as a backup device for an individual's residence or travel. In this case, the evidence shows that the activity chair is medically necessary to maintain Petitioner's health and that there are several functional differences between the activity chair and adaptive stroller, namely, the activity chair is customizable which allows for the chair to be raised and lowered to meet the child's needs in the home. The differences in functionality show that the activity chair and adaptive stroller are not duplicative items. Lastly, the evidence shows that the activity chair Petitioner currently has remained in the home and was not used to transport Petitioner. Based on these facts, approval of the activity chair is consistent with the mandates as set forth in N.J.A.C. 10:74-1.4 and clinical guidelines.

Accordingly, for the reasons set forth above and those contained in the Initial Decision, I hereby ADOPT the Initial Decision and FIND that Amerigroup's denial of Petitioner's request for an activity chair was inappropriate in this matter.

THEREFORE, it is on this 29th day of JANUARY 2024,

ORDERED:

That the Initial Decision is hereby ADOPTED, as set forth herein.

Jennifer Langer Jacobs, Assistant Commissioner
Division of Medical Assistance and Health Services