

STATE OF NEW YORK  
DEPARTMENT OF HEALTH

REQUEST: April 12, 2016

AGENCY: MAP

FH #: 7281249P

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In the Matter of the Appeal of	:
	: <b>DECISION</b>
	<b>AFTER</b>
	: <b>FAIR</b>
	<b>HEARING</b>
from a determination by the New York City	:
Department of Social Services	:

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**JURISDICTION**

Pursuant to Section 22 of the New York State Social Services Law (hereinafter Social Services Law) and Part 358 of Title 18 NYCRR, (hereinafter Regulations), a fair hearing was held on August 15, 2016, in New York City, before an Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant



For the MLTCP

Jillian Hinkson, Fair Hearing Representative

**ISSUE**

Was the MLTC's determination, dated March 10, 2016, to deny Appellant's request for a Hospital bed, semi-electric (head and foot adjustment) with any type side rails, without mattress (Code E0261), and mattress, inner spring (Code E0271), correct?

**FINDINGS OF FACT**

An opportunity to be heard having been afforded to all interested parties and evidence having been taken and due deliberation having been had, it is hereby found that:

1. The Appellant, age 59, is in receipt of Medicaid and has been receiving care and services from a Managed Long Term Care Partial Cap Plan operated by Centers Plan for Healthy Living (the "MLTCP").

2. On March 2, 2016, a request for a Hospital bed, semi-electric (head and foot adjustment) with any type side rails, without mattress (Code E0261), and mattress, inner spring (Code E0271) was made on the Appellant's behalf. Included with the request was a Letter of Medical Necessity as well as Progress Notes, all from the Appellant's physician. It is noted that the Letter of Medical Necessity provides:

*"The above named patient is currently under my medical care and is being treated for Dementia, Hypertension and a history of multiple strokes CVA.*

*At this time I am requesting a hospital bed for her. She is unable to transfer safely. Having this device will reduce and or ameliorate the risk of falls and reduce her risk of hospital admission.*

*If you have further questions please feel free to contact my office ..."*

3. By Notice dated March 10, 2016, the MLTCP informed the Appellant of its determination to deny the request on the basis that:

*"A request has been submitted on your behalf for a Hospital Bed. A Letter of Medical Necessity indicates that you have a diagnosis of dementia, hypertension and multiple strokes and reflects that your need for a hospital bed is related to your needing assistance when transferring. Generally, Medicaid Guidelines provide for the coverage of Hospital Beds when the beneficiary is confined to bed and the beneficiary's condition necessitates positioning of the body in a way not feasible in an ordinary bed. Thus, clinical documentation provided does not support the medical necessity for a Hospital Bed at this time and this request for a Hospital Bed must, therefore, be denied."*

4. On April 12, 2016, the Appellant requested this fair hearing.

### **APPLICABLE LAW**

Section 365-a of the Social Services Law provides in part:

2. "Medical Assistance" shall mean payment of part or all of the cost of care, services and supplies which are necessary to prevent, diagnose, correct or cure conditions in the person that cause acute suffering, endanger life, result in illness or infirmity, interfere with his capacity for normal activity, or threaten some significant handicap and which are furnished an eligible person in accordance with this title, and the regulations....

Section 364.2 of the Social Services Law provides in part, as follows:

The Department of Health shall be responsible for . . .

- (b) establishing and maintaining standards for all non-institutional health care and

services rendered pursuant to this title, . . .

\* \* \*

Section § 365-a. of the Social Services Law regarding character and adequacy of medical assistance advises in relevant part that the amount, nature and manner of providing medical assistance for needy persons shall be determined by the public welfare official with the advice of a physician and in accordance with the local medical plan, this title, and the regulations of the department. "Standard coverage" shall mean payment of part or all of the cost of medically necessary medical, dental and remedial care, services and supplies, as authorized in this title or the regulations of the department, which are necessary to prevent, diagnose, correct or cure conditions in the person that cause acute suffering, endanger life, result in illness or infirmity, interfere with such person's capacity for normal activity, or threaten some significant handicap and which are furnished an eligible person in accordance with this title and the regulations of the department. Such care, services and supplies shall include the following medical care, services and supplies, together with such medical care, services and supplies provided for in subdivisions three, four and five of this section, and such medical care, services and supplies as are authorized in the regulations of the department:

(k) care and services furnished by an entity offering a comprehensive health services plan, including an entity that has received a certificate of authority pursuant to sections forty-four hundred three, forty-four hundred three-a or forty-four hundred eight-a of the public health law (as added by chapter six hundred thirty-nine of the laws of nineteen hundred ninety-six) or a health maintenance organization authorized under article forty-three of the insurance law, to eligible individuals residing in the geographic area served by such entity, when such services are furnished in accordance with an agreement approved by the department which meets the requirements of federal law and regulations.

The NYS Durable Medical Equipment, Orthotics, Prosthetics and Supplies Procedure Codes and Coverage Guidelines provides, in pertinent part:

## **HOSPITAL BEDS AND ACCESSORIES**

### General Guidelines:

- A hospital bed is covered if the member is bed-confined (not necessarily 100 percent of the time) and the member's condition necessitates positioning of the body in a way not feasible in an ordinary bed, or attachments are required which cannot be used on an ordinary bed.
- Hospital beds must be Durable Medical Equipment (DME) and used in the home.
- The manufacturer of a hospital bed must be registered with the United States Food and Drug Administration (FDA).
- The hospital bed itself must be listed or cleared to market by the FDA.
- In no instance will an ordinary bed be covered by the Medicaid Program. An ordinary bed is one which is typically sold as furniture and does not meet the definition of DME or a hospital bed.
- A hospital bed as defined must include bed ends with casters, IV sockets, side rails (any type) and is capable of accommodating/supporting a trapeze bar, overhead frame and/or other accessories.

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- Side rail pads and shields (E1399) are covered when there is a documented need to reduce the risk of entrapment or injury.
- If a member's condition requires a replacement innerspring mattress (E0271), foam rubber mattress (E0272) and/or side rails (E0305 or E0310); it will be covered for a member owned hospital bed.
- When the extent and duration of the medical need is not known at the time of ordering, hospital beds and related accessories should be rented.

#### E0251

#### **Hospital bed, fixed height, with any type side rails, without mattress**

A standard hospital bed is one with manual head and leg elevation adjustments but no height adjustment, which conforms to accepted industry standards, consisting of a modified latch spring assembly, bed ends with casters, two manually operated foot end cranks, is equipped with IV sockets and is capable of accommodating/supporting a trapeze bar, side rails (any type), an overhead frame and other accessories.

#### Coverage Criteria:

- A fixed height hospital bed (E0251) is covered if one or more of the following criteria (1-4) are met:
  1. The member has a medical condition which requires positioning of the body in ways not feasible with an ordinary bed. Elevation of the head/upper body less than 30 degrees does not usually require the use of a hospital bed; or
  2. The member requires positioning of the body in ways not feasible with an ordinary bed in order to alleviate pain; or
  3. The member requires the head of the bed to be elevated more than 30

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degrees most of the time due to congestive heart failure, chronic pulmonary disease or problems with aspiration. Pillows or wedges must have been considered and ruled out; or

4. The member requires traction equipment, which can only be attached to a hospital bed.

#### E0261

#### **Hospital bed, semi-electric (head and foot adjustment) with any type side rails, without mattress**

A semi-electric hospital bed is one with manual height adjustment and with electric head and leg elevation adjustments.

#### Coverage Criteria:

- A semi-electric hospital bed (E0261) is covered if the member meets one of the criteria 1-4 above and:

6. The member requires frequent changes in body position and/or has an immediate need for a change in body position (i.e., no delay in change can be tolerated) and the member can independently effect the adjustment by operating the controls.

#### E0271 Mattress, inner spring

Section 358-5.9 of the Social Services Law provides, in pertinent part, that at a fair hearing concerning the denial of an application for or the adequacy of public assistance, medical assistance, HEAP, SNAP benefits or services; or an exemption from work activity requirements the appellant must establish that the agency's denial of assistance or benefits was not correct or that the appellant is eligible for a greater amount of assistance or benefits or is exempt from work requirements pursuant to Part 385 of this Title. Except, where otherwise established by law or regulation, in fair hearings concerning the discontinuance, reduction or suspension of public assistance, medical assistance, SNAP benefits or services, the social services agency must establish that its actions were correct.

## **DISCUSSION**

The record establishes that the Appellant is in receipt of Medicaid and has been receiving care and services from a Managed Long Term Care Partial Cap Plan operated by Centers Plan for Healthy Living (the “MLTCP”) and that on March 2, 2016, a request for a Hospital bed, semi-electric (head and foot adjustment) with any type side rails, without mattress (Code E0261), and mattress, inner spring (Code E0271) was made on the Appellant’s behalf. Included with the request was a Letter of Medical Necessity as well as Progress Notes, all from the Appellant’s physician. It is noted that the Letter of Medical Necessity provides:

*“The above named patient is currently under my medical care and is being treated for Dementia, Hypertension and a history of multiple strokes CVA.*

*At this time I am requesting a hospital bed for her. She is unable to transfer safely. Having this device will reduce and or ameliorate the risk of falls and reduce her risk of hospital admission.*

*If you have further questions please feel free to contact my office ...”*

The record then establishes that by Notice dated March 10, 2016, the MLTCP informed the Appellant of its determination to deny the request on the basis that:

*“A request has been submitted on your behalf for a Hospital Bed. A Letter of Medical Necessity indicates that you have a diagnosis of dementia, hypertension and multiple strokes and reflects that your need for a hospital bed is related to your needing assistance when transferring. Generally, Medicaid Guidelines provide for the coverage of Hospital Beds when the beneficiary is confined to bed and the beneficiary’s condition necessitates positioning of the body in a way not feasible in an ordinary bed. Thus, clinical documentation provided does not support the medical necessity for a Hospital Bed at this time and this request for a Hospital Bed must, therefore, be denied.”*

The NYS Durable Medical Equipment, Orthotics, Prosthetics and Supplies Procedure Codes and Coverage Guidelines provides for the Appellant establishing medical necessity for a Hospital bed, semi-electric (head and foot adjustment) with any type side rails, without mattress (Code E0261) if she meets at least one of the following:

1. *The member has a medical condition which requires positioning of the body in ways not feasible with an ordinary bed. Elevation of the head/upper body less than 30 degrees does not usually require the use of a hospital bed; or*
2. *The member requires positioning of the body in ways not feasible with an ordinary bed in order to alleviate pain; or*

3. *The member requires the head of the bed to be elevated more than 30 degrees most of the time due to congestive heart failure, chronic pulmonary disease or problems with aspiration. Pillows or wedges must have been considered and ruled out; or*
4. *The member requires traction equipment, which can only be attached to a hospital bed.*

Plus,

*The member requires frequent changes in body position and/or has an immediate need for a change in body position (i.e., no delay in change can be tolerated) and the member can independently effect the adjustment by operating the controls.*

It is noted that neither the Letter of Medical Necessity nor the Progress Notes refer to the Appellant requiring positioning or elevating her head, nor is there a reference of the Appellant requiring traction equipment.

At this hearing, the Appellant's Representative argued that the Progress Notes provide for the Appellant as having itching and a rash that would necessitate repositioning of the Appellant in her bed. However, the Appellant's Representative's testimony is found to be unpersuasive as a review of the Progress Notes provide for the Appellant as having a rash on her hands as well as a "rash and other nonspecific skin eruption.. As such, the record does not establish how the Appellant needs to be repositioned and due to her medical conditions.

In addition, the Appellant's Representative argued that the Appellant requires the hospital bed due to her home aide's inability to help the Appellant sit upright and due to the Appellant's history of stroke. However, it is noted that the record does not include any clinical documentation from the Appellant's physician regarding this claim.

The Appellant's Representative made no other arguments nor offered any documentation not already submitted into evidence by the MLTCP.

Section 358-5.9 of the Social Services Law provides, in pertinent part, that at a fair hearing concerning the denial of medical assistance benefits, the Appellant must establish that the denial of benefits was not correct. The record does not establish that the Appellant has met this burden. As such, the MLTCP's determination to deny Appellant's request for a Hospital bed, semi-electric (head and foot adjustment) with any type side rails, without mattress (Code E0261) was correct. Furthermore, in so far as the MLTCP's determination to deny Appellant's request for a Hospital bed, semi-electric (head and foot adjustment) with any type side rails, without mattress (Code E0261) was correct, the record establishes that the MLTCP's determination to deny Appellant's request for a mattress, inner spring (Code E0271) was also correct.

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**DECISION**

The MLTCP's determination dated March 10, 2016, to deny Appellant's request for a Hospital bed, semi-electric (head and foot adjustment) with any type side rails, without mattress (Code E0261), and mattress, inner spring (Code E0271) was correct.

DATED: Albany, New York  
08/29/2016

NEW YORK STATE  
DEPARTMENT OF HEALTH

By

A handwritten signature in black ink, consisting of a large, stylized 'H' followed by a series of loops and a horizontal line extending to the right.

Commissioner's Designee