



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED] [REDACTED]
c/o [REDACTED] and [REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/169452

PRELIMINARY RECITALS

Pursuant to a petition filed October 13, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on January 15, 2016, at Alma, Wisconsin. Hearings scheduled for November 18, 2015, and December 21, 2015, were rescheduled at the petitioner's request.

The issue for determination is entitled to medical assistance reimbursement for a mobility device.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED] [REDACTED]
c/o [REDACTED] and [REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED] [REDACTED]
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Buffalo County.

2. The Department approved a Kid Walk II on June 3, 2015. The listed price of that equipment was \$8,006.40. When it approved the request, the Department allowed reimbursement of \$1,555, the maximum allowed for gait trainers.
3. On August 11, 2015, the petitioner submitted an amended request that changed the procedure code from E0140, which is for a walker with fixed height or adjustable trunk support, to E1399, which is for miscellaneous or not otherwise specified equipment. The Department denied this request.
4. The petitioner is a 10-year-old girl diagnosed with cerebral palsy.
5. The petitioner is not expected to ever be able to stand on her own.
6. The petitioner seeks the trainer for the following:

Daily Standing and ambulation is medically necessary to improve and maintain bone density, to increase muscle strength throughout core and extremities, to improve active range of motion (especially of the lower extremities), to improve balance reactions, to improve weight shift in all directions, to improve bowel and bladder function, and to improve self-esteem and social contract. Daily standing will help to maintain the surgical correction of her hips and lower extremities, including the joint integrity and shape, and the muscle/tendon support around the joint.
7. The goals for the petitioner do not include improving her standing pivot transfers or ambulation skills

DISCUSSION

The petitioner is a 10-year-old girl diagnosed with cerebral palsy who depends upon others to help with all of her daily activities. She received a manual wheelchair a few years ago but cannot operate it. Last summer she requested a Kid Walk II gait trainer costing \$8,006.40. The Department approved it but limited reimbursement to \$1,555 because that is the maximum it normally pays for standers. The petitioner resubmitted the request, changing the procedure code from E0140, which is for a walker with fixed height or adjustable trunk support, to E1399, which is for miscellaneous or not otherwise specified equipment. The Department denied this request.

At the heart of this matter is the requested trainer's intended purpose. Gait trainers are a type of durable medical equipment that require prior authorization. Wis. Admin. Code § DHS 107.24. As standers, their purpose is generally to be part of program that leads to standing and pivoting or moving about. But the petitioner's mother concedes that the petitioner will never be able to pivot or walk on her own. Thus she requests the trainer not as a means to learn to pivot or walk but rather as a mobility device that replaces a scooter or wheelchair. The problem is that this does not to be the primary reason expressed in the request itself. The request does indicate that gait trainer is to "assist [her] with ambulation" and that this equipment allows her "more initiation of movement and more control with maneuvering" than another model. However, it gave the following reason for the gait trainer being medically necessary:

Daily Standing and ambulation is medically necessary to improve and maintain bone density, to increase muscle strength throughout core and extremities, to improve active range of motion (especially of the lower extremities), to improve balance reactions, to improve weight shift in all directions, to improve bowel and bladder function, and to improve self-esteem and social contract. Daily standing will help to maintain the surgical correction of her hips and lower extremities, including the joint integrity and shape, and the muscle/tendon support around the joint.

Prior Authorization Request Attachment, Linda Benson, P.T., p.2.

The Department cannot make an informed decision unless the prior authorization request is complete and accurate. Although administrative law judges can review information submitted after the Department approves or rejects the request, they are not medical experts, so if the Department cannot make an informed decision, it is unlikely that the ALJ can either. Only the petitioner's mother testified, and while she certainly understands her daughter's problems, she is not a medical expert who can explain such things as the amount of independent mobility the requested trainer will provide her daughter, the cost of alternative options, and why those options will not meet her needs. Therefore, I will determine whether the Department properly denied the request in light of the goals the provider set forth in the request.

Whenever a medical assistance service is requested, the department must consider, among other things, the medical necessity of the service, the appropriateness of the service, the cost of the service, the extent to which less expensive alternative services are available, and whether the service is an effective and appropriate use of available services. Wis. Admin. Code, § DHS 107.02(3)(e)1.,2.,3.,6. and 7. "Medically necessary" means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. HFS 107.035, is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;
 7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code, § DHS 101.03(96m).

Medical assistance allows a variety of durable medical equipment. The list includes occupational therapy assistive or adaptive equipment such as positioning equipment and adaptive eating utensils, orthopedic or corrective shoes, orthoses, home health equipment such as patient lifts and hospital beds, oxygen equipment, physical therapy splinting or adaptive equipment designed to help the recipient independently perform daily activities, prostheses, and wheelchairs. Wis. Admin. Code § DHS 107.24(2)(c)1 – 8.

A consistent thread running through all the allowable types of durable medical equipment is that they directly and immediately help the recipient accomplish a physical task. Although the equipment may also assist the recipient in learning to perform a task better, this is not its primary function. For example, adaptive equipment allows a recipient to immediately do such things as stand and handle food. Orthotic devices support the body's weight to allow the recipient to stand and move around. Oxygen equipment assists breathing. Prostheses and wheelchairs take the place of limbs that are missing or do not function and, like orthotic devices, allow a recipient to move around. The department's guidelines on standers grant a limited exception to this general rule by allowing the equipment if the recipient is in an active

physical therapy program with “specific and measurable goals for significant improvement (not maintenance) expected in the areas of standing pivot transfers and/or ambulation skills.” *Wisconsin Medicaid Update 96-01*, p.2. The documentation must include a written carryover plan for caretakers to actively work toward specific therapy goals and must indicate that the recipient has achieved necessary developmental skills. *Id.* On the other hand, standers cannot be approved primarily to improve the recipient’s general health. To allow this, would in effect put standers in the category of general exercise equipment, something else the Department does not cover,

Thus, while the provider’s goals of improving bone density, balance, strength, range of motion, weight shift, and bowel and bladder function are all important, they do not provide a legal basis for approving the requested gait trainer. Because the allowable bases for approving the trainer—specific and measurable goals for significant improvement in standing pivot transfers and ambulation skills—are not the goals set for the petitioner, I must uphold the Department’s denial.

CONCLUSIONS OF LAW

The Department correctly denied the requested gait trainer because it is not medically necessary.

THEREFORE, it is

ORDERED

The petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 25th day of February, 2016

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 25, 2016.

Division of Health Care Access and Accountability