



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

[REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed October 15, 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 New Richmond, Wisconsin. Hearings scheduled for November 20, 2015, and December 21, 2015, were rescheduled at the petitioner's request.

The issue for determination is whether the petitioner is entitled to medical assistance reimbursement for a stander.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Attorney Polly Shoemaker
32 N Bassett St
Madison, WI 53703

Respondent:

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

By: [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 St. Croix County.

- [REDACTED]
2. The Office of Inspector General denied the petitioner's request for a stander after determining that it is not medically necessary.
 3. The petitioner is a five-year-old girl diagnosed with congenital hydrocephalus, diabetes, and unspecified developmental delays.
 4. The petitioner cannot walk and stand.
 5. The information included with the petitioner's request for a stander indicated that she would never be able to walk or stand.
 6. The petitioner has had steroid treatment that her providers believe will allow her to develop enough strength to walk or stand.
 7. The petitioner was in an active physical therapy program meant to allow her to walk or stand.

DISCUSSION

The petitioner seeks medical assistance reimbursement for a stander. She is a five-year-old girl diagnosed with a hydrocephalus, diabetes, and unspecified developmental delays. Other than rolling about a bit, she cannot move on her own. When she first sought the stander last summer, her provider indicated that she would not be able to stand on her own. Now, because of steroid treatment, her physical therapist believes she will be able to do so. The Office of Inspector General denied her request because there is inadequate evidence to support it.

Standers are a type of durable medical equipment that require prior authorization. Wis. Admin. Code § DHS 107.24. As with any medical assistance service, 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.*

But standers cannot be approved primarily to improve the recipient's general health. Thus, although a stander may improve bone density, balance, strength, range of motion, weight shift, and bowel and bladder function, and no one questions that these are important, these factors do not provide a legal basis for approving a stander.

As noted at the beginning of this discussion, the petitioner's provider initially stated that she was not expected to be able to stand or move about on her own. Now, according to a submission by her attorney, she is expected to at least stand at some point. I am somewhat skeptical when someone's potential increases in response to the denial of a services. Still, the petitioner has had hormone treatment and at the time of the hearing was in an active physical therapy program whose goals included standing. The department suggested that she may be eligible for renting rather than purchasing a stander to determine if it would effectively lead to standing or walking.

The department did not guarantee that it would approve a request for a rental. The problem with this indecision is that the petitioner could wait several more months and still find out she could not get equipment that might help her. I find that because of the somewhat inconsistent statements concerning her potential, it would not be cost effective to approve purchase of a stander. But I do find that rental of such a stander is cost effective because it is less expensive means to determine whether this equipment, which could lead to impressive results, will work. At the hearing, the petitioner's representatives indicated that they may submit a new prior authorization. I do not know if this has happened. Regardless, I will order the department to approve rental of a stander for 60 days. This should provide enough time to determine if eventual purchase is medically necessary.

I note to the petitioner that her provider, United Seating and Mobility, LLC, will not receive a copy of this decision. HIS PARENTS MUST PROVIDE UNITED SEATING AND MOBILITY, LLC WITH A COPY OF THIS DECISION. In order for her to obtain the requested elevator accessory, United Seating and Mobility, LLC, must submit a new prior authorization request for the stander to Forward Health. It should include a copy of this decision with that request.

CONCLUSIONS OF LAW

Renting a stander for 60 days is a cost-effective and medically necessary means of treating the petitioner.

THEREFORE, it is

ORDERED

That United Seating and Mobility, LLC, is authorized to provide the petitioner with rental of the requested stander for 60 days. To receive reimbursement, United Seating and Mobility, LLC, must submit its claim, along with a copy of this decision and a new prior authorization form, to Forward Health for payment.

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 2nd day of March, 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 March 2, 2016.

Division of Health Care Access and Accountability
Attorney Polly Shoemaker