



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

MPA/142340

PRELIMINARY RECITALS

Pursuant to a petition filed July 12, 2012, 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 August 28, 2012, at Waukesha, Wisconsin.

The issue for determination is whether the agency properly denied a Prior Authorization (PA) request submitted on the Petitioner's behalf for a toileting training chair.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Mary Chucka

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

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Waukesha County.

2. Petitioner is a 4 ½ year old diagnosed with thoracic level spina bifida. Petitioner was born with myelomeningocele, the most severe form of spina bifida. He has a neurogenic bowel and bladder that require intermittent catheterization and ongoing monitoring of his kidney function. Petitioner currently wears diapers and his bladder is catheterized 4 times/day. He is dry of urine between catheterizations. He attends school and uses a specialized toilet chair system at school. He uses a wheelchair for mobility purposes. Petitioner requires ongoing therapy for core strength, for encouraging strong muscle formation and for fostering independence. Due to low muscle tone, particularly in his core, the Petitioner cannot sit on a conventional toilet seat or toilet trainer due to lack of back, side and lower extremity support. Petitioner’s cognitive skills are typical for a 4 ½ year old child. At the time of the hearing, the Petitioner was changed and catheterized at home by lying down on a changing table.
3. On April 3, 2012, the Petitioner’s provider submitted a PA request for a Bluewave toileting system with back and side supports as well as footrests at a cost of \$1,015.
4. On June 19, 2012, the Department denied the PA request.
5. On July 12, 2012, the Petitioner’s parents filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

The Wisconsin Medicaid (MA) program may cover only basic and medically necessary health care services and equipment. The MA program reviews PA requests using specific criteria as well as other requirements as listed in Wisconsin Administrative Code §§ DHS 101 – 108.

A service or equipment is “medically necessary” if it meets the criteria in Wis. Admin. Code § DHS 101.03(96)(m) as follows:

“Medically necessary” means a medical assistance services 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: . . .

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.

The Department appeared via written summary dated August 22, 2012. It indicated in its summary that its denial is based on a lack of information to confirm the Petitioner will achieve bowel and bladder continence if the requested equipment is granted. The Department argues it is not clear that the equipment is required to treat the recipient’s disability. Specifically, the Department notes that there is no report of any trial attempts by the Petitioner to complete self-catheterization or a bowel program and there is a lack of evidence to justify equipment because it may be completed from other supportive surfaces.

The Department argues that the equipment is not cost-effective because it serves only one purpose. The Department notes that the use of the equipment for hygiene purposes is not clearly identified and asserts that the requested equipment cannot be used for showering or bathing purposes.

Additionally, the Department notes that the Petitioner currently cannot transfer himself and it is unknown if he will be able to independently transfer in the future. It contends a patient lift may then be required to

be used with the chair. Thus, without knowing whether the Petitioner will be able to independently transfer to the chair, purchase of the equipment is premature.

Finally, the Department argues that the equipment is not the most appropriate supply or level of service because a bed can be adapted or modified for purposes of a bowel continence program until a bowel program is established.

The Petitioner's mother testified on his behalf at the hearing. She stated that it is not a question of whether the Petitioner will be able to toilet independently but when. She testified that the Petitioner is cognitively aware of the difference between using a diaper and a toilet. He knows that other 4 year olds use a toilet and he wants to learn. There is no evidence that his cognitive skills will prevent him from independently toileting. It is a matter of his physical disability – his current need for assistance with transfers, sitting upright, catheterization and enemas. She testified that most children have sufficient physical skills to perform self-catheterization at 5 – 7 years of age. A major issue for the Petitioner is that a lack of sensation does not allow him to feel the urge to use the bathroom. Therefore, he is on a schedule for catheterization.

The Petitioner's mother testified that the Petitioner can be catheterized while sitting on the toilet instead of laying down on a diaper changer which he has outgrown. She notes that the school has a similar toileting seat for his use at school starting this fall (by the time of this decision, the school year has started and the plan was for him to start using the seat at the start of the school year).

The Petitioner's mother testified that the toilet seat is necessary to allow him to sit on the toilet with back and side support. She acknowledged that the Petitioner currently cannot transfer independently to a toilet chair but he receives therapy for core strengthening and the goal is for him to be able to transfer to the chair independently. With regard to sitting in the chair, she testified that the Petitioner should be able to sit in the chair unassisted because it has the back and side support he requires.

The Petitioner's mother testified that the Petitioner is currently not on a bowel program because the chair is necessary for him to begin a program. She notes that the toilet seat will eliminate the need for diapers and allow for a more normal toileting experience for the Petitioner. The Petitioner's mother strongly disagrees with the Department's assessment that the Petitioner should be using his bed for his bowel program. She testified that it is an issue of dignity for the Petitioner, that he is almost 5 years old and it is degrading and offensive to be changed in the bed where he sleeps. She feels this is not an option for a 5 year old that is cognitively intact.

The Petitioner's mother further disagrees that there was no information regarding other uses of the requested chair. Specifically, she notes that there was information presented to the Department that the Petitioner will use the chair as a shower chair. She testified that he currently has a shower chair but has nearly outgrown it. The requested chair will be able to be used until almost adulthood as both a toilet chair and a shower chair.

The Petitioner also presented information from the provider indicating that the Petitioner's risk for secondary health conditions relating to bladder and bowel continence can be reduced. Specifically, it notes the risk of pressure ulcers, poor self-management, and dependence on others for a bowel program will be reduced by use of the chair. The provider also presented information regarding other systems which are more expensive than the chair that is requested.

The evidence is clear that the Petitioner requires the use of a toilet chair with back and side supports in order to participate in a bladder and bowel toileting program at home. The Petitioner is cognitively ready and able to participate in a bladder and bowel program. While the Petitioner continues to need some physical assistance to transfer to the toilet chair and needs to learn the catheterization and enema process

for a bladder and bowel program, it is difficult to understand how he can learn these skills without using and practicing with the chair. There will be a learning curve but there is no evidence that he will not be able to eventually accomplish the goal of being able to self-catheterize and give himself enemas. Though the Petitioner may not, at this time, be able to transfer himself to the toilet chair, the evidence suggests that he will be able to perform all other primary aspects of a toileting program.

The Petitioner presented sufficient evidence to demonstrate that the requested system is cost-effective. The provider presented evidence that it researched other systems which were more expensive. The requested chair can also be used as a shower chair and is adaptable so that the Petitioner should be able to use it for many years.

Based on the evidence, the Petitioner has demonstrated that the requested toilet chair is necessary to treat the Petitioner's disability, it is cost-effective and it is the most appropriate equipment for the Petitioner. The chair meets the criteria as being "medically necessary" for the Petitioner.

A note to the Petitioner: the provider, Homestead Independence, will not receive a copy of this decision. In order to have the requested equipment approved, the Petitioner must give the provider a copy of this decision and the provider must re-submit the PA request along with a copy of this decision.

CONCLUSIONS OF LAW

The agency did not properly deny the Petitioner's PA request.

THEREFORE, it is

ORDERED

That Petitioner's provider may re-submit a PA request for the Bluewave toileting system with anterior support and footrests and its invoice, along with a copy of this decision, to ForwardHealth for payment and ForwardHealth is directed to make payment accordingly.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 24th day of September, 2012

Debra Bursinger
Administrative Law Judge
Division of Hearings and Appeals

c: Division of Health Care Access And Accountability - email
Department of Health Services - email



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on September 24, 2012.

Division of Health Care Access And Accountability