



FH  
[REDACTED]

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

---

In the Matter of

[REDACTED]

DECISION

MPA/143024

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed August 13, 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 October 09, 2012, at Waukesha, Wisconsin.

The issue for determination is whether the Division of Health Care Access and Accountability (DHCAA) correctly denied Petitioner's request for a Mustang Walker and Accessories at a cost of \$4,963.00.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

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

By: Office of the Inspector General (OIG) via Letter  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.

2. On June 6, 2012, National Seating and Mobility, Inc. submitted a prior authorization request on behalf of Petitioner for a Mustang walker and accessories at a cost of \$4,963.00. (Exhibit 4, pgs. 7-10)
3. On June 29, 2012, the DHCAA sent Petitioner a notice, indicating that her prior authorization request was denied. (Exhibit 4, pg. 35)
4. Petitioner's mother submitted a request for fair hearing on behalf of Petitioner that was received by the Division of Hearings and Appeals on August 13, 2012. (Exhibit 1)
5. Petitioner is a two-year-old child with Static Encephalopathy. As a consequence, Petitioner suffers from impairments that include hypotonia, muscle weakness, ataxic movement patterns, increased joint mobility, poor grading of movement and poor body awareness. (Exhibit 1; Exhibit 4, pg. 11)
6. At the time the prior authorization request was submitted, Petitioner was 20 month olds and her means of ambulation was limited to rolling and four-point creeping for one to two steps. (Exhibit 4, pg. 11)
7. Petitioner is now able to pull herself to a standing position and cruise along furniture for two to three steps, but is otherwise unable to walk independently. (Testimony of Suzanne Adamus, Petitioner's physical therapist.)

### DISCUSSION

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. State v. Hanson, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). In a case involving a prior authorization request, the party seeking authorization for medical equipment or services has the initial burden to establish that the necessary criteria for authorization have been met.

When determining whether the Mustang Walker meet approval criteria, the Department must review, among other things, its medical necessity, appropriateness, and cost; the extent to which less expensive alternative services are available; and whether it 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).

In its letter dated September 14, 2012, the Office of the Inspector General (OIG) supports the DHCAA's decision to deny coverage for the Mustang Walker stating that the request for the walker is basically a request for an inappropriate level of service. Specifically, the OIG states that the request for the Mustang Walker is premature because Petitioner has not completed gait training and cannot show that she is able to use the walker independently in her home. The OIG also asserts that there are more cost effective options, such as a standard \$100 walker.

With regard to cost-effectiveness, the \$100 walker proposed by OIG would not be appropriate, given that Petitioner is only two years-old, unable to fully support and control her trunk while walking, and does not have the muscle strength to maneuver a traditional walker. However, given that Petitioner is following traditional patterns of a child learning to walk, i.e. pulling oneself up on furniture; trying to cruise along furniture, the OIG has a legitimate concern that money will be wasted on accessories to teach Petitioner things that she can learn without specialized equipment, despite her limitations, albeit at a delayed pace.

Ms. Adamus expressed some safety concerns because Petitioner fell and knocked out a tooth during an attempt to pull up to a stand and cruise, but such falls are not unheard of, even with children who do not have special needs. Further, with or without the equipment, this hazard exists, since it is unlikely Petitioner would be in the walker during all of her waking hours and she will naturally want to pull herself up to a stand and cruise.

The OIG is also correct that there is insufficient evidence in the record to support a finding that Petitioner would be able to independently use the Mustang Walker in her home.

First, while the video footage submitted by Petitioner's mother shows Petitioner readily propelling herself forward in the Mustang Walker, it also made clear that Petitioner is unable to steer the walker or turn it around and therefore, is unable to use it independently at this time. Second, based upon Ms. Adamus's testimony, it appears that Petitioner has only tried the equipment at New Berlin Therapies. As such, there is insufficient evidence that she would be able to use the Mustang Walker just as well at home.

It should be noted that the vendor has loaned New Berlin Therapies a Mustang Walker for the time being, but no one has discussed the possibility of renting the proposed equipment, to see if Petitioner can learn to steer the walker and use it independently.

Based upon the foregoing, it is found that Petitioner has not established that all authorization criteria have been met at *this* time.

If Petitioner is able to rent a Mustang Walker, a new prior authorization request may be submitted for that service/equipment. Further, if Petitioner makes additional progress with the loaned walker, such that she can use it independently in her home, she can file a new prior authorization request for purchase of the walker.

#### **CONCLUSIONS OF LAW**

The DHCAA correctly denied Petitioner's request for a Mustang Walker and Accessories at a cost of \$4,963.00.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

**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, 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 19th day of October, 2012.

---

Mayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals

c: [DHSDHADHCAA@wisconsin.gov](mailto:DHSDHADHCAA@wisconsin.gov) - Health Care Access & Accountability



**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](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 19, 2012.

Division of Health Care Access And Accountability