



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

MPA/143426

PRELIMINARY RECITALS

Pursuant to a petition filed August 28, 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 telephone hearing was held on October 01, 2012, at Appleton, Wisconsin.

The issue for determination is whether the Department erred in denying the May 25, 2012 prior authorization request for an Omni transfer system.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Petitioner's Representative:

Ted Malkowski
920 Westhill Blvd
Appleton, WI 54914

Respondent:

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

By: Mary Chucka (in writing)
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Outagamie County.
2. Petitioner suffers from Cerebral Palsy.

3. Petitioner's provider submitted a prior authorization request for an Omni reclining bath/shower commode transfer system on May 25, 2012.
4. The Department denied the request on June 16, 2012.
5. Petitioner filed a timely appeal.

DISCUSSION

In determining whether to approve or disapprove a request for prior authorization, the DHCAA is required to consider the following criteria found at Wis. Adm. Code, §DHS 107.02(3)(e):

1. The **medical necessity** of the service;
2. The appropriateness of the services;
3. The **cost** of the service; . . .
5. The extent to which **less expensive alternatives** are available; . . .
7. The effective and appropriate use of available services; . . .

Emphasis added. "Medically necessary" is defined in the administrative code as any MA service under chapter 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; . . .
 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; . . .

Wis. Adm. Code, §DHS 101.03(96m).

The DHCAA's objections to the request were that the equipment was not necessary as the petitioner also had approval for personal care worker services in his home. Secondly, the Department did not feel that the Omni system was the most cost-effective system to meet the needs of the petitioner.

Petitioner made two arguments. First, he argued that the facts have changed since the initial request and under the new facts, the Department's arguments do not hold up. Specifically, petitioner explained that the PCW services have ended, and that petitioner has now reached almost 50 pounds and is not able to be moved safely by family or PCW workers. As to this argument, I point out that I am to review a decision by the Department. I cannot simply usurp the role of the Department in approving a prior authorization based on all new facts that the Department did not have any opportunity to consider. If the facts have changed, then petitioner should file a prior authorization request and inform the Department of the new facts. The Department must get an opportunity to approve or deny before an ALJ can review that decision. It is not the job of the Division of Hearings and Appeals to obtain post-denial evidence unavailable to the DHCAA and determine if it fits the approval criteria. Furthermore, as discussed below, the mother did not testify. There was no firsthand testimony about the lack of PCW services. The only information

about the increase in weight was a physician order that indicated a 46 pound weight. The mother did not appear to testify about either of these assertions.

The second argument from petitioner was that even under the facts as considered by the Department, the request met the medical necessity criteria. I simply disagree. First, the petitioner's representative had an uphill battle here because he did not have any witnesses. He relied on his own "testimony" and a few documents submitted without foundation to fully explain or support them. Most significantly, petitioner's mother inexplicably elected not to appear at the hearing. It is the petitioner and provider that have the burden in a case such as this. They must prove that the Department is wrong. It seems to me that a 37 pound child could be transferred without too much difficulty to the commode or a static shower chair. With personal care workers to accomplish this most of the time, I am not sure why the Omni would be necessary over the other less expensive options suggested in the Department's submission (see exhibit #3). Only the mother or similar witness could have provided the specific information about her son, transferring him, and other circumstances surrounding what they experience in their home. The statements would have carried much more weight coming from the mother, or by her providing corroboration to the information provided by the provider at the time of the hearing. Petitioner simply did not meet his burden to show that the Department was in error.

As I told the petitioner's representative at the time of the hearing, it would behoove petitioner to file a new PA with the new information and a more thorough explanation of why the alternative products suggested by the Department are inappropriate.

CONCLUSIONS OF LAW

The Department did not err in denying the prior authorization request for an Omni chair system.

THEREFORE, it is

ORDERED

That this appeal 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 Madison,
Wisconsin, this 15th day of October, 2012

John P. Tedesco
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 October 15, 2012.

Division of Health Care Access And Accountability
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