



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

MPA/143564

PRELIMINARY RECITALS

Pursuant to a petition filed August 29, 2012, under Wis. Stat. §49.45(5), and Wis. Admin. Code §HA 3.03(1), to review a decision by the Office of Inspector General (OIG) in regard to Medical Assistance (MA), a telephonic hearing was held on September 25, 2012. The record was held open to allow the agency time to review additional information submitted by petitioner at hearing. The agency provided its response to the new information on October 16, 2012.

The issue for determination is whether the petitioner is entitled to MA reimbursement for a SleepSafe II bed.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Petitioner's Representative:

Attorney Richard A. Lavigne Jr
32 N Bassett St
Madison, WI 53703-2606

Respondent:

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

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

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Jefferson County. He is an 11 year old boy diagnosed with Duchenne Muscular Dystrophy. He has diffuse neuromuscular weakness, developmental delay and is nonambulatory. He requires assistance with all activities of daily living. He receives G-tube feedings and uses a bi-level positive airway pressure respiratory support device during sleep. His medical needs require the elevation of the head and foot of his bed.
2. In 2010 petitioner received a hospital bed through a PA request. As petitioner tends to wiggle, shift and flail about during sleep, he frequently gets tangled in the bed rails on his bed.
3. On June 19, 2012 the petitioner's provider submitted a PA request on his behalf for a SleepSafe II bed. The bed has solid high sides and a mattress that fits tightly against the frame to avoid entrapment. Its cost is \$9249.
4. On July 18, 2012 the Department of Health Services (DHS) issued a notice to petitioner stating that the requested bed was denied because it did not find it to be a covered benefit, and because it did not find the bed medically necessary.

DISCUSSION

The petitioner is an 11-year-old boy who frequently gets tangled in the bed rails on his hospital bed as he moves or flails without control during sleep. This can cause joint dislocation and pain. He requests a SleepSafe II bed at a cost of \$9249 because it has solid high sides and a mattress that fits tightly against the frame to avoid entrapment. The Division of Health Care Access and Accountability (now known as the Office of the Inspector General – a division of the DHS) denied the request for a variety of reasons, which are more fully explained in their summaries dated September 13, 2012 (Exhibit J) and October 16, 2012.

The relevant criteria for determining whether this request is necessary are found in §DHS 107.02(3)(e) (e). This section requires the DHS to consider the following factors:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;...
6. The extent to which less expensive alternative services are available;...

The key factor is “medical necessity,” which is defined in the administrative code as any MA service under chapter HFS 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; . . .
 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; . . .

Wis. Admin. Code, §DHS 101.03.

A variety of reasons were given by the OIG for the denial. The OIG does not disagree that petitioner requires the use of a hospital bed and that it is medically necessary. That is shown through its own statements as well as providing a hospital bed through a separate PA request in 2010. I do not disagree. Basically, what it comes down to is that the requested bed has solid sides that fit snugly against the mattress which will prevent petitioner from being entangled in the side rails. Since the time of that last PA, petitioner's musculature has weakened and he is no longer able to control his body so as to be able to remove himself if he got stuck in the bed.

The most persuasive argument from the OIG was that petitioner has not established that the requested bed was "cost effective" compared to less expensive alternatives, and otherwise medically necessary. The responsibility for providing sufficient information falls upon the requesting provider, per Wis. Admin. Code §DHS 106.02(9)(e); see also *Lavine v. Milne*, 424 U.S. 577, 583-584 (1976). When asked at hearing what alternatives were tried, petitioner's parent and physical therapist both testified quite generally about what alternatives were considered and attempted. They referred to rail covers made of netting, pillows and bumpers that did not work to relieve the entanglement issue for petitioner's body or tubes. The OIG provided more than 16 options to consider as alternatives. See Exhibit J. The alternatives as provided do not all have costs shown for those items, but a simple internet search shows me that they are, even when using multiple items in conjunction with each other, less costly than the requested bed. Petitioner's mother indicated that one of the suggested items would not work – the Comfy LiftBed – because it would not resolve the issues as to protecting his lower extremities and because the sides pose a risk for suffocation when petitioner wears his bi-pap mask at night. There are several items that I must assume were not tried as no testimony or evidence indicated that they were: wedges, gap fillers, and mattresses with raised perimeters. These items appear to be viable options for the petitioner given his small size and entanglement or entrapment concerns. Based on the evidence before me, I cannot find that they have tried all of the less costly alternatives - and documented those attempts to show why they would not work.

Further, I must add that it is still not explained why a solid-sided bed would work to keep petitioner safe from injury. If he is flailing, it is unclear how he would not potentially injure himself when hitting up against a hard surface. It is also unclear why tubing could not potentially still get tangled under his own body in the requested bed. Petitioner's mother testified that they do use a baby monitor to listen for petitioner. It was left unanswered why an alarm on either the g-tube and/or bi-pap would not suffice to alleviate concerns about entanglement with those tubes. And in that same vein, why the requested bed reduces the concern for suffocation with the bi-pap mask? It was also left unanswered as to what kind of positioning equipment is being used now, if any, to accommodate feedings, raising head or foot ends of the bed, or side-lying (a position petitioner prefers).

In sum, the petitioner has not met his burden of proof to show that the requested bed is medically necessary. As a side-note to the petitioner and his provider, a new request may be submitted at any time. The provider should include at least some documentation of any attempts at trying less costly alternatives, perhaps with photographic documentation of the alleged deficiencies, in order to demonstrate to the professional Consultant in the OIG that the requested bed is medically necessary under the MA Program rules. This is not meant to diminish petitioner's challenges or those faced by his caregivers, but rather to explain the need for sufficient information when requesting a \$9249 bed, given that he already has a hospital bed granted about 2 years ago.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on

equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The petitioner has not met his burden to show that he is entitled to MA reimbursement for a SleepSafe II bed.

THEREFORE, it is

ORDERED

That the petition for review herein 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 served and 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 6th day of December, 2012

\sKelly Cochran
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 December 6, 2012.

Division of Health Care Access And Accountability
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