



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

In the Matter of

██████ ██████
██████████████████
██████████████████
██████████████████

DECISION

MPA/144617

PRELIMINARY RECITALS

Pursuant to a petition filed October 19, 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 scheduled for November 27, 2012. Petitioner failed to make herself available for the hearing and her appeal was dismissed as abandoned. Petitioner filed a timely request for rehearing, and her request was granted on December 17, 2012. A rehearing was scheduled for January 18, 2012, which was rescheduled at petitioner’s request. Ultimately, a telephone hearing was held on February 11, 2013.

Subsequent to the hearing, on February 18, 2013, petitioner’s provider submitted correspondence in response to respondent’s written denial. An Interim Decision was issued and respondent was ordered to consider this newly presented information. Following its review, on March 6, 2012, respondent submitted correspondence affirming its previously issued denial.

The issue for determination is whether the respondent correctly denied petitioner’s prior authorization request for a speech generating device.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

██████ ██████
██████████████████
██████████████████
██████████████████

Respondent:

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

Written Appearance by: Theresa Walske, MS-CCC-SLP
 Office of the Inspector General
 1 West Wilson Street, Room 272
 P.O. Box 309
 Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:
 Peter McCombs
 Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 17 year old resident of Iowa County; she resides at home with her parents.
2. Petitioner has been diagnosed with severe static encephalopathy and severe receptive and expressive language delays. Petitioner is unable to verbally communicate effectively.
3. In 2009, the respondent authorized reimbursement for the purchase of a Dynavox V SGD for petitioner. Petitioner successfully used this device for communication purposes previously, though it is presently in need of repair and is not in use.
4. Petitioner has needed to submit the Dynavox V SGD for repairs on at least three separate occasions since it was purchased in 2009. The repairs have resulted in months of time that the speech generating device was unavailable to petitioner.
5. On July 20, 2012, petitioner's provider submitted PA request # [REDACTED], requesting a WEGO speech generating device.
6. On September 10, 2012, respondent denied PA request # [REDACTED], stating that the services were not medically necessary.

DISCUSSION

The Medicaid program may only reimburse providers for medically necessary and appropriate health care services and equipment listed in Wis. Stat. §§ 49.46(2) and 49.47(6)(a), as implemented by Wis. Admin. Code, Ch. DHS 107. Some services and equipment require submission and approval of a written prior authorization request by the provider. This PA request would be one of those requiring prior authorization. When determining whether to approve any prior authorization, the Office of the Inspector General for the Department of Health Services (formerly Division of Health Care Access and Accountability (DHCAA)) must consider the generic prior authorization review criteria listed at *Wis. Admin. Code, DHS § 107.02(3)(e)*. Those criteria are:

- (e) *Departmental review criteria.* In determining whether to approve or disapprove a request for prior authorization, the department shall consider:
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;
 5. The quality and timeliness of the service;
 6. The extent to which less expensive alternative services are available;
 7. The effective and appropriate use of available services;
 8. The misutilization practices of providers and recipients;
 9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including medicare, or private insurance guidelines;

10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.

The Wisconsin Administrative Code does define the term ‘medical necessity’. It is a service that:

“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).

As with most public assistance benefits the initial burden of demonstrating eligibility for any particular benefit or program at the operational stage falls on the applicant, *Gonwa v. Department of Health and Family Services, 2003 WI App 152, 265 Wis.2d 913, 668 N.W.2d 122 (Ct.App.2003)*. In other words, it is Petitioner’s burden to demonstrate that she qualified for the requested equipment by a preponderance of the evidence. It is not the respondent’s burden to prove that she is not eligible.

The respondent submitted a detailed letter explaining its rationale for this denial. Ex # 2. It is too lengthy to reproduce here but it does, in brief, note three bases for the denial:

1. The requested Wego device is not cost effective compared to the alternatives.

The record indicates that the Petitioner has a speech generating device (Dynavox) that was purchased in 2009. While the Dynavox is presently inoperable, it can be repaired. The repair cost is estimated to range from \$500.00 to \$800.00. The new Wego device will cost roughly \$6,000.00. The record does not indicate that the Dynavox device owned by petitioner is no longer supported by the device maker.

2. The provider failed to establish that the petitioner was sufficiently using the originally approved Dynavox V device.

The provider has submitted little documentation supporting its contention that the petitioner was effectively utilizing the Dynavox V. The respondent, when initially considering this request, returned the PA request to the provider and requested documentation demonstrating that petitioner had effectively utilized her previous speech generating device. In response, the provider did not provide documentation, but instead wrote to indicate that the petitioner had used the device spontaneously. At hearing petitioner’s

mother testified that they did not track the petitioner's consistent use of the device very well at home, though she believed that the school maintained better logs. Unfortunately, the record does not demonstrate that the provider submitted this information to the respondent. As noted previously, the provider has the burden to establish the basis for the PA request. I must concur with the respondent that the provider did not demonstrate that petitioner was sufficiently utilizing the Dynavox prior to its disrepair. In this instance, the respondent was clearly seeking to determine whether the previous device was utilized in order to establish a basis or justification for approval of a similar, new device. While the provider's failure to address this issue substantively may not have resulted in a denial decision on its own, I find that the respondent's determination on this issue was informative and reasonably formed a basis for the denial.

3. The provider has failed to demonstrate the medical value or usefulness of the requested Wego device.

The petitioner's provider argues that the Wego device has been prescribed by petitioner's physician, and noted by her to be "medically necessary." I would agree that a speech generating device is medically necessary for the petitioner; in light of the previously authorized purchase of the Dynavox, I would presume that the respondent would agree as well. However, the provider's burden here is to establish that the *Wego* device is medically necessary. Based upon the record before me, I am unable to conclude that it has met that burden. I note that when the respondent returned the PA request to the provider requesting further documentation regarding the petitioner's trial use of the Wego, it specifically requested logs demonstrating the Wego's use in a variety of environments. In response, the provider wrote that, while tracking sheets were provided for use at school, in the home, in the community, and at work, they were apparently not returned or not completed consistently. Lacking this crucial information, I conclude that the respondent appropriately determined that the provider did not demonstrate the value or usefulness of the Wego device.

I do not doubt the sincerity of petitioner's mother's testimony regarding her daughter's request for the Wego device. I do not doubt that the provider's contention that the Wego device is a superior product. However, Medical Assistance is meant to provide basic services at a reasonable cost to a large number of recipients. The petitioner has not established that the Dynavox device is unable to competently provide the petitioner with communication assistance. Petitioner's mother's efforts on behalf of her daughter are laudable and understandable, but Administrative Law Judges do not possess powers of equity; we cannot rule based on what seems fair. We are limited to the law as written. The respondent has established proper bases for its denial of the PA request, and the petitioner and her provider have not successfully rebutted those bases. I note that nothing in this decision precludes the petitioner from again pursuing approval of the Wego device.

CONCLUSIONS OF LAW

Respondent properly denied PA Request # [REDACTED], as petitioner's provider has failed to establish the medical necessity of the Wego device.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and hereby 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, 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 Madison,
Wisconsin, this 8th day of April, 2013

\sPeter McCombs
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 April 8, 2013.

Division of Health Care Access And Accountability