



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

MPA/145679

PRELIMINARY RECITALS

Pursuant to a petition filed November 29, 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 January 31, 2013, at Green Bay, Wisconsin.

The issue for determination is whether the Department erred in its denial of a prior authorization request for a power wheelchair in PA # [REDACTED]

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: Mary Chucka, OTR
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 is a resident of Brown County.
2. On October 10, petitioner's provider submitted a PA request for a power wheelchair with modifications at a cost of \$6,169.

3. On November 16, 2012, the Department informed petitioner that it was approving the PA request with modification. The modification approved the purchase of a scooter at a cost of \$5,477.
4. Petitioner filed a timely appeal.

DISCUSSION

Wheelchairs and their components are items of durable medical equipment that can be paid for by MA if prior authorization is obtained. Wis. Admin. Code § DHS 107.24(2)(c)8. In determining whether to grant prior authorization, the Division must apply the generic prior authorization criteria found at Wis. Admin. Code § DHS 107.02(3)(e). The Division relied on several of the generic prior authorization code criteria in rejecting the instant prior authorization request:

(3) Prior Authorization

(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;**
- ...
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
- ...

"Medically necessary" is defined as a medical assistance service under Chapter 107, Wis. Adm. Code which is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability;
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipients 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; . . .
 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 .**

(Emphasis added).

"Medically necessary" is therefore more of a *legal* term as opposed to a *medical* term. The specific term "medically necessary" is identified in the above rules of the state administrative code. Therefore, while a medical professional or provider may conclude an item is "medically necessary", it is the DH CAA which must adjudicate the request and determine whether the item or service for which payment is sought meets the legal definition of "medically necessary."

The Department denied this request because the documentation did not support the wheelchair rather than other cost effective options such as a scooter. The Department consultant noted that the PA documentation includes a document called a "Mobility Evaluation." The Department notes that page one of this document indicates that the petitioner is "capable of using...[a] scooter within the home." That section of the Mobility Evaluation form asks the provider to "please detail" the answer regarding the scooter. The provider did not provide any answer other than "yes."

The Department also raises the question of whether petitioner can use a walker, again pointing that the form indicates that she can. I note that on form there is a question that asks the provider "Patient's Current Ambulatory Status (Please include any assistive device, physical assistance, and degree of assistance required. The provider simply wrote "walker."

I note that another question on the form asks the provider to indicate "how has the patient's condition progressed to now requiring power mobility?" The provider answered "yes."

The Department notes that a scooter would be more cost effective and the documentation is not clear as to why this would not be appropriate. The Department also indicated that a walker appears to be used in the home now and there is no indication that petitioner can no longer ambulate that way. It is clear that the provider answered the questions on the form without detail or explanation in many cases. Unfortunately for petitioner, it is the responsibility of the provider to prove to the Department that the item is medically necessary, cost effective and appropriate. One word answers are likely to not be adequate when an explanation is needed.

At hearing, petitioner submitted an OT/PT initial assessment dated 1/9/13 (ex. #4). Petitioner purports that this document supports the PA. But, this was not included in the original PA request. The Department has, presumably, not seen it or considered it. 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. I will review the Department action based on what the Department knew at the time. If there is more information that the provider wishes to present, it should offer it as part of a new PA request to the Department. My review of the paperwork actually submitted to the Department confirms the Department's position that the provider failed to meet its burden and, in fact, provided answers that raised more questions.

It certainly appears as though the petitioner may need this item. Nothing in this Decision states otherwise. But, the provider must explain why this item is necessary and appropriate to the Department. It has not done so. If the provider was willing to appear at the hearing in this matter as he did, I imagine that he is also willing and able to take the time to write a one or two page explanation to the Department. So many of these cases would not come to this point if providers would simply do so and ensure that the submitted paperwork is thorough.

CONCLUSIONS OF LAW

The Department did not err in denying the PA request # [REDACTED]

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 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 Madison,
Wisconsin, this 15th day of March, 2013

\sJohn 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 March 15, 2013.

Division of Health Care Access And Accountability