



FH  
[REDACTED]

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

---

In the Matter of

[REDACTED]

DECISION

MPA/146125

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed December 26, 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 February 20, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Department erred in denying the prior authorization request #2123490012 for a pneumatic compressor.

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: Pamela Hoffman, PT, DPT, MS (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 Milwaukee County.
2. Petitioner underwent surgery for a rotator cuff tear.

3. On December 12, 2012, petitioner's providers, Steven Kaplan, MD and Kinex Medical Company submitted a request for prior authorization for a two month rental of a pneumatic compressor (code E0650).
4. The provider did not provide documentation explaining how the item would be used or why it was needed. On the submitted form entitled "Certificate of Medical Necessity & Letter of Medical Necessity the sought item is indicated, but the field designated "Reason Equipment is Prescribed" is left blank. None of the boxes in that field is checked.
5. On December 18, the Department denied the request.
6. Upon learning of the denial, petitioner returned the item (which had been delivered despite no approved prior authorization) as she did not want to pay out of her own pocket.
7. Petitioner filed a timely appeal.

### DISCUSSION

The Office of the Inspector General (OIG) 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 are covered if a prior authorization request is submitted and approved by the OIG in advance of receiving the service. The MA program never covers some services and equipment. The Wisconsin Administrative Code provides for criteria to be followed by the MA program when reviewing requests for prior authorization. The criteria are as follows:

(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 alternatives 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 close 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.

Wis. Admin. Code §DHS 107.02(3)(e).

Durable medical equipment, which this serial casting is considered, is defined as "equipment which can withstand repeated use, is primarily used for medical purposes, is generally not useful to a person in the absence of illness or injury and is appropriate for use in the home." Wis. Admin. Code §DHS 101.03(50).

"Medically necessary" is defined as a MA 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. DHS 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. Adm. Code § DHS 101.03(96m).

In the case at hand, the Department explains that the documentation does not support the need or appropriateness of a compressor in petitioner's case. The Department questions the use of a compressor for petitioner's post-operative needs. The Department notes that ForwardHealth considers the appropriate use of this item to treat lymphedema or vascular disease. The Department notes that the PA request was short of explanation from the provider as to how this item would be used or why it was required.

At hearing, the provider did not appear. Petitioner did not have any additional documentation to submit from provider. It is clear to me that the PA request documentation submitted by the provider to the Department (see ex. #1) does not come close to demonstrating medical necessity. Petitioner explained that the provider recommended that petitioner use the compressor to somehow circulate cold water to keep post-operative swelling down. This was because the provider believed it would be difficult for petitioner to hold an ice pack.

It is the provider's burden to demonstrate medical necessity in the case of a PA request. Clearly, the PA request did not document an appropriate use of this item or medical necessity and ForwardHealth was correct to deny it. I note that under Wis. Admin. Code § DHS 104.01(12)(b),(c), and based on the testimony at the hearing, **the provider may not collect the cost of the service from the petitioner** since it was not her responsibility to submit a timely PA request. The petitioner should contact the MA program if the provider attempts to do so.

### CONCLUSIONS OF LAW

The Department did not err in its denial of the PA request as the provider did not demonstrate medical necessity or appropriateness.

**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 8th day of March, 2013

---

\sJohn P. Tedesco  
Administrative Law Judge  
Division of Hearings and Appeals



**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 March 8, 2013.

Division of Health Care Access And Accountability