FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]
c/o [redacted] & [redacted]
[redacted]
[redacted]

DECISION

MPA/146144

PRELIMINARY RECITALS

Pursuant to a petition filed December 20, 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 25, 2013, at Green Bay, Wisconsin. Following the hearing, the petitioner submitted written argument. The Department then submitted a rebuttal in writing, maintaining its position on the denial.

The issue for determination is whether the Department erred in its denial of prior authorization #2122780027 for a Nova Chat 7 speech generating device ("SGD") and 42-location keyguard.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[redacted]
c/o [redacted] & [redacted]
[redacted]
[redacted]

Petitioner's Representative:

[redacted]
[redacted]
[redacted]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Theresa Walske, MS, CCC-SLP
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. Petitioner is 7 years old. Petitioner has a diagnosis of autism and language disorder. Petitioner received in-home autism servicers and also receives services through an IEP with the school district.
3. Petitioner underwent a 16-week trial of speech generating devices through provider CP, Inc. Several devices were trialed. The provider recommended the use of the Nova Chat 7 device after the trial.
4. On or around October 3, 2012, petitioner submitted a PA request for a Nova Chat 7 SGD and key guard.
5. On October 17, 2013, the Department contacted the provider and asked for supplemental information.
6. On November 6, 2012, the provider prepared and submitted responses to the request for supplemental information.
7. On December 4, 2012, the Department denied the PA request.
8. Petitioner filed a timely request for hearing.

DISCUSSION

The Division of Health Care Access and Accountability (HCAA) 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 DHCAA in advance of receiving the service. Finally, some services and equipment are never covered by the MA program.

The Department's review criteria for prior authorization requests are found at Wis. Admin. Code § DHS 107.02(3)(e), DHS 101.03(m) and DHS 107.09(4)(d). DHS 107.02 provides, in relevant part, as follows:

> **(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; . . .

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.

In cases of prior authorization, the burden is on the provider/petitioner to establish that the item or service is medically necessary.

The petitioner has autism and is unable to speak. He seeks medical assistance reimbursement for a computerized speech generating device with specific accessories. Durable medical equipment must be authorized by the Division of Health Care Access and Accountability (DHCAA) before the medical assistance program will pay for it. *See* §DHS 107.24, Wis. Adm. Code. When determining whether a service is necessary, the division must review, among other things, the medical necessity of the service, the appropriateness of the service, the cost of the service, the extent to which less expensive alternative services are available, and whether the service is an effective and appropriate use of available services. Wis. Admin. Code § DHS 107.02(3)(e).

With regard to an SGD, MA Update No. 2004-25 requires that the provider demonstrate that the SGD "will significantly improve the ability to communicate and…be able to use the device effectively."

In this case, the Department SLP consultant articulated three bases for denial in her initial letter to the ALJ (ex. #2): the first basis for denial is that the documentation does not support that the petitioner is able to use the device effectively with self-initiation, and without prompts and cues. The Department notes that MA Update No. 2004-25 and its related booklet entitled *A Guide to Obtaining Augmentative Communication Devices and Accessories Through Wisconsin Medicaid and BadgerCare Plus*, requires that a provider seeking coverage for an SGD include an assessment report reflecting certain baselines including receptive and expressive language skills. The Department argues that no such assessment report was supplied with the PA request. This requirement is also in the PA Guidelines 130.J.004.02 at I. Special Considerations (C):

> *The evaluation must include the following or be returned to the provider for additional information…[a] thorough evaluation with interpretive and baseline information of the recipient's functional receptive and expressive language skills including recipient's cognitive skills required to use a communication device relating to attention to task, speed and accuracy of information processing, ability to attach meaning to symbols (either alone or in sequence), ability to remember symbols, retrieve them when needed, problem solve situations and use of symbols to communicate and capacity for meaningful exchange of messages. This information can be obtained through formal assessment, adapted tools and informal measures, standardized or non-standardized.*

In the second basis for denial, the consultant expresses that a longer trial may be necessary to determine whether the member could demonstrate that self-initiated, non-cued use of the SGD is consistent for

expression of his wants/needs. This is really the same basis as the first: the Department does not believe that the documentation shows that petitioner can use the device effectively. The consultant notes that while the Nova Chat 7 may be the best-suited device based on the trials, this does not mean the device is medically necessary.

The final basis for denial is the Department opinion that the documentation does not support that the device is a cost-effective solution as the school staff could utilize lower-tech devices for a period until it is established that the Nova Chat device is appropriate. Again, this is really the same at the first basis in that the Department is arguing that the device is not cost effective without establishing that it can be used by petitioner appropriately.

The Department repeated these points in its written rebuttal following the hearing. In her March 25, 2013 letter, Ms. Walske cites many instances in the record in which the providers indicate that petitioner does not initiate communication without adult facilitation, or that he regularly needs prompts by adults. The Department also argues regarding the period of petitioner's trial use of the device:

> *From the first date of data to the last date of data…, there is essentially no change or advancement of the complexity of items that are requested. Member does not seem to have increased his repertoire of items he was requesting during all the trials., or compared to what he was requesting prior to the trials, indicating growth in his ability to functionally use and/or depend on the SGD to produce novel utterances….Any of the rote favored item could be put on a less-expensive, low-tech SGD or on a communication board to teach the concept of communication intent….*

Department 2/25/13 letter at 5.

Petitioner was somewhat persuasive in rebuttal of these points at hearing and also in his written argument. [redacted], SLP testified that the Department is misinterpreting the repeated reference to the need for prompting petitioner in the use of the device. She explained that she considers even reminding petitioner to "use your talker" as a prompt. She argued that the Department is incorrect in interpreting such a direction as negating a "self-initiated" description of the petitioner's use of the device.

Overall, it seems that this is a case of professionals who interpret documentation differently. I recognize that the Department consultant has never met or observed petitioner, and that the petitioner's witnesses have done so. I also recognize that it is possible to pick excerpts from all the various documentation to support arguments on both sides of this matter. Certainly, it appears that the Department consultant is quite adept at finding one or two sentences that support a very particular objection. But, I must base a decision on the entirety of the record.

I affirm the denial of this PA on two bases. The first is that I interpret the entire record to fall in favor of the Department. I believe that the petitioner has not established that he has adequate communication skills in general, and has not established skills necessary to make this specific device appropriate given the cost involved. I have no question that the device would be helpful. But, this is a very expensive machine and cost-effectiveness must be a consideration under program rules. My overall impression upon review of the record is one of limited effective use at this point. *This may change* (or may have already changed) at which time the apparent benefits would outweigh the cost. But, medical assistance cannot provide every item or service that may be beneficial – the item or service must meet the threshold requirements

The second basis for denial is that it appears from my review as well that certain required documentation was not submitted as part of the PA request. The rules require submission of baselines relating to

expressive and receptive language and cognitive function (and many other factors). While these areas are mentioned in passing on the SGD evaluation report (see ex. #1), my interpretation is that the rule requires a more comprehensive assessment. I realize that there is also some pertinent information related to cognitive function in the IEP or other school-sourced documents, but none of this was particularly relevant to the appropriateness of a SGD. Frankly, I also feel it is incumbent upon the provider to provide this information in a clear manner to the Department rather than require the Department to go hunting through dozens or hundreds of pages to find the information the rules call for. My review of the documentation that was submitted with the PA request (ex. #1) and the supplemental information supplied by the provider results in my decision that the Department did not err in finding the documentation insufficient and denying the PA request. I anticipate that petitioner may argue that such a requirement is unreasonable. Success of such an argument by petitioner would require more evidence and a thorough argument. On this record I cannot find such requirement to be unreasonable.

Given the passage of time since the initial PA request, and the encouragement of the Department to consider additional information, it would possibly benefit petitioner to submit a new PA request with further results of petitioner's use of the iPad applications as well as the information the department opines is lacking.

CONCLUSIONS OF LAW

The Department did not err in its denial of the PA request for the Nova Chat 7 SGD.

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 9th day of May, 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 May 9, 2013.

Division of Health Care Access And Accountability
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