



FH

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/146151

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 28, 2013, at Kewaunee, Wisconsin.

The issue for determination is whether the Department erred in its denial of the prior authorization (# [REDACTED]) for a Crocodile walker and sling.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Ted Malkowski
920 Westhill Blvd
Appleton, WI 54914

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 is a resident of Kewaunee County.
2. Petitioner is a 14 year old boy with muscular dystrophy and a July 2012 femur fracture.

- 3. On October 17, 2012, the provider, Reliant Rehab, LLC, submitted a prior authorization request for a Crocodile walker and sling in an amount of \$855.
- 4. He was assessed in September 2012 by Elizabeth Waerzeggers, PT. A record of the 9/26 encounter was submitted with the PA request. Also included was an undated letter from the same therapist with the subject line “Medical request for assistive device.”
- 5. The PA request also included a record from a 9/26/12 encounter with Terence S. Edgar, MD.
- 6. On December 3, 2012, the PA was denied.
- 7. Petitioner filed a timely appeal.

DISCUSSION

Physical therapy adaptive equipment is a type of durable medical equipment that can be paid for by MA if prior authorization is obtained. Wis. Admin. Code § HFS 107.24(2)(c)6. In determining whether to grant prior authorization, the Division must apply the generic prior authorization criteria found at Wis. Admin. Code § HFS 107.02(3)(e). The Division relied on several of the generic prior authorization code criteria in rejecting the instant prior authorization request:

HFS 107.02 General limitations.

...

(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;
- ...
- 6. The extent to which less expensive alternative services are available;

...

Wis. Admin. Code §HFS 107.02(3)(e)1,6. The Department argued not that the gait trainer is not medically necessary, but that the documentation failed to establish that it was:

[I]t cannot be found in the documentation if the member used a walker before his femoral fracture and if he did, what type of walker it was and why it no longer meets his needs. Nor was it found in the documentation if the member did not use a walker before his femoral fracture, why the member would continue to need a walker for long term use after his fracture heals. It also cannot be found in the documentation what type of walker was loaned from the physical therapy department for the member to use...

What is apparent from the documentation is that the member is able to use a loaner walker from the physical therapy department to walk. The suggestion in the PA request that the loaner walker did not meet his needs

because he had pain when he walked does not support the requested walker, as neither the provider, nor Ms. Waerzeggers, nor Dr. Edgar appear to have described the cause of the member's pain while walking.

* * *

In summary, the submitted documentation does not confirm the member requires the requested walker for long term use as his long term needs have not been identified....

See exhibit #2, Department consultant 1/4/13 letter. I note that in the case of a PA request, it is the responsibility of the provider submitting the request to adequately document and support the medical necessity of the requested item. I agree that the submitted documentation (*see ex. #1*) leaves many unanswered questions including those raised in the Department's letter (*ex. #2*).

The provider testified at hearing, as did Ms. Waerzeggers. At that time, they attempted to explain that the need for the device is long-term and that petitioner is not likely to return to walking without a device. It does not appear to me that this is clear, however, in the documentation supplied with the PA request. That documentation over and over refers to the femur fracture from July 2012. The provider argued that nothing in the documentation suggested that the item would be a temporary one so does not understand how one could infer from the documentation that it is a temporary need. But, the Department does not posit that this was a temporary need, or that the documentation stated that it was a temporary need. The Department simply notes that the documentation does not make clear whether the item will be needed long term or not. Understandably, the Department does not wish to spend \$855 on an item that can be borrowed or rented for 6 weeks from another source.

The provider also testified that a reverse walker is the only practical solution for petitioner. They noted that none of the options offered by the Department were practical for petitioner. The provider noted also that many alternatives were tried "but they did not work for him." However, the documentation does not appear to state what other walkers were tried or why they did not work for petitioner. Ms. Waerzeggers explained that petitioner was assessed with a forward walker and was able to ambulate only 20 feet. She notes that her 9/26/13 assessment reflects his improved posture with two reverse walkers, though he was fearful of the use of that style of walker. Ms. Waerzeggers explained at the hearing that the Crocodile walker can be used as either a reverse or forward position walker and would allow petitioner to use it immediately to achieve mobility in the forward position but would also later be able to be used in the reverse position which would offer petitioner improvement in posture. She elaborated that the improved posture will improve petitioner's range of motion and reduce contracture development. Ms. Waerzeggers then testified that the sling option on the Crocodile is important to petitioner because it would allow petitioner to unweight or would provide support if petitioner should lose his balance. None of this explanation appears with any specificity in the documentation. However, I do note that the latter part of Ms. Waerzeggers' letter, which appears to have been in response to a request for further justification following the initial PA request, does briefly address the value of the forward/reverse style walker and the sling accessory:

this gait trainer allows for the patient to be able to use it in the forward or reverse directions with the added comfort of the sling to support for potential loss of balance. Use of this walker will afford child the ability to perform safe ambulation without concern for falling as well as to assist with partial weightbearing support to alleviate pain.

See ex. #1, Waerzeggers letter. But, there is no meaningful explanation here as to why the forward/reverse style is medically necessary. It may be the best choice, but the program is not intended to provide what is ideal or optimal, only what is medically necessary. It would have likely saved much effort and time of all involved if she or the provider had taken the time to draft a one or two-page narrative letter that fully explained why this walker was being requested. After all, this walker is valued at six to twelve times the value of the walkers that are reimbursable by ForwardHealth without a PA. The provider expects far too much if he expects his burden to be met by the Department consultant's efforts poring through cryptic notes and unsupported conclusory assertions rather than his own efforts to provide helpful and thorough information and explanation.

The provider came to hearing with additional documentation and the therapist to provide testimony. The therapist provided meaningful explanation that was far more thorough and persuasive than the letter she had written which appeared to be a cut-and-paste of her treatment notes with an additional sentence or two thrown in. But, it is not the job of the Division of Hearings and Appeals to obtain post-denial evidence unavailable to the Department and determine if it fits the approval criteria. If the provider would like, it can file a new PA request with additional documentation.

CONCLUSIONS OF LAW

The provider did not meet its burden to establish medical necessity.

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 28th 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 28, 2013.

Division of Health Care Access And Accountability
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