



FH

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/146424

PRELIMINARY RECITALS

Pursuant to a petition filed January 08, 2013, 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 28, 2013, at Green Bay, Wisconsin.

The issue for determination is whether the Department erred in its denial of PA request # [REDACTED] for a manual mobility base and accessories.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Mary Chucka, OTR (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 Brown County.

2. On October 19, 2012, petitioner's provider submitted a request for prior authorization for a manual mobility base and accessories in an amount totaling \$3,033.84. The specific base item was a Convaid EZ Rider Transit Stroller.
3. Petitioner is 5 years old and non-verbal. He has a diagnosis of autism. Petitioner presents challenges to adults in his care as he has mobility issues and difficulties with transitions. Petitioner will, at times, drop to the ground, pull on the adult, resist the adult, bite at others. Petitioner will also run away from his supervising adult and this makes it very difficult for an adult to bring him into the community.
4. The PA request indicates the petitioner needs a 5-point harness to be transported.
5. The Department denied the request on November 21, 2012.
6. Petitioner filed a timely appeal.

DISCUSSION

Petitioner's mother explained at hearing that the stroller was requested because her son is not safe when out in public. He will run away from an adult and risk injury. She explained that such a stroller will allow her son to be restrained and, thus, enable an adult to transport petitioner safely in public.

The Department clearly understands this reasoning based on its letter (see ex. #3). But, the Department argues that such an intended purpose does make the item medically necessary and such a use makes the stroller a safety item which is a non-covered service. The Department notes that Wis. Admin. Code § DHS 101.03 requires that a medically necessary item be "required to prevent, identify or treat...illness, injury or disability." The Department also notes that provider Update 2004-75 further defines non-covered durable medical equipment and excludes "Safety Equipment (gait belts, harnesses, vests, alarm systems, wanderguard, medical alert bracelets, other types of monitoring equipment, or fences)." I also note that this same Update excludes "restraints" from coverage.

I agree with the Department that rules as they exist today do not allow ForwardHealth to reimburse for this stroller for the purpose of restraining petitioner while he is transported from place to place.

At hearing, petitioner's mother did not argue that this stroller is actually allowable under the specific program rules. Instead, she argued that she thinks the rules are wrong and that the furtherance of safety should be a medical necessity.

While petitioner may understandably find this frustrating, this administrative law judge does not possess the powers of a court of equity to issue decisions based upon fairness. Judges presiding in a Circuit Court may choose to exercise the powers of a "court of equity"; the Division's administrative law judges cannot. See, *Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 F.Supp. 540, 545 (E.D. Wis. 1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The Department did not err in its denial of this PA request.

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 25th 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 25, 2013.

Division of Health Care Access And Accountability