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[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/148705

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 10, 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 May 22, 2013, at Milwaukee, Wisconsin.

The issue for determination is

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Pamela Hoffmann, PT, DPT, MS, Physical Therapy Consultant  
Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

Kenneth D. Duren, Assistant Administrator  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a three year-old resident of Milwaukee County. She lives with her parents.
2. The petitioner has Down Syndrome, sub-talar instability, and valgus ankle and foot deformity.

3. On March 5, 2013, the petitioner's durable medical equipment provider, Hanger Prosthetics & Orthotics, filed a prior authorization request with the Department's Division of Health Care Access and Accountability seeking coverage of the cost for replacement supramalleolar orthotics (SMOs) at a cost of \$2,176.
4. On March 8, 2013, the DHCAA denied the request finding that the provider had not established with clinical evidence that the petitioner had a gross foot deformity or leg length discrepancy; or that she required a brace attached to a shoe or mis-mated shoes; or that she had diabetes, ulceration or pre-ulceration or partial foot amputation conditions requiring orthotics. Therefore the DHCAA concluded that the requested SMOs were not medically necessary under MA rules.
5. The petitioner does not have any of the conditions listed in Finding of Fact #4. Rather, she has the conditions listed in Finding of Fact #2, above.

### DISCUSSION

The petitioner has sub-talar instability with valgus ankle and foot deformity. Wis. Admin. Code §DHS 107.24(5)(a)(1) provides as follows:

**(5) NON-COVERED SERVICES.** The following services are not covered services:

**(a) Foot orthoses or orthopedic or corrective shoes for the following conditions:**

1. Flattened arches, regardless of the underlying pathology;
2. Incomplete dislocation or subluxation metatarsalgia with no associated deformities;
3. Arthritis with no associated deformities; and
4. Hypoallergenic conditions;

See also, Exhibit #1, at p. 2.

The petitioner's parents asserted that her deformity is a "gross deformity". They point to the report of Dr. Chris D. Dwyer, D.C., who indicated on April 4, 2013, that the petitioner has "excessive external hip rotation" and a "wide base of support". PT Consultant Hoffman reviewed Dr. Dwyer's report and noted as follows:

The member's hip position may be due to the valgus deformity of the feet or the valgus deformity may be due to the hip position. It is a medical practice bias to determine which is causative of the other one. In this case, however, the requested treatment is to treat the member's valgus and talor foot deformities and it appears as if these deformities are visually appraised as a flat foot. Externally rotated hips and a wide base of support are typical ambulation styles for someone with Down Syndrome (the physical therapist bias would account for these positions as due to hypotonia, reduced core stability and balance, and ligamentous hypermobility, rather than being caused by a hip or valgus foot deformity).

See, Exhibit #1, at pp. 3-4.

In addition, Dr. Dwyer's letter report of April 4, 2013, makes it clear that the petitioner "exhibits flat pronated feet, metatarsus primus adductus, and hallux abducto/valgus deformities". This diagnoses is consistent with a description of flatten arches rather than "gross foot deformity".

I must concur with the Consultant's determination. The medical documentation submitted does not support a finding of medical necessity for the orthoses for a covered service. I also reiterate the Consultant's suggestion to the petitioner that the provider may file a request for Health Check services coverage of a service otherwise not covered by MA.

The DHCAA denial of SMOs is herein affirmed. The petition for review is dismissed.

**CONCLUSIONS OF LAW**

That the MA program does not cover the requested orthoses for flat feet and/or sub-talor instability with valgus deformities, and the petitioner does not have gross foot deformities.

**THEREFORE, it is ORDERED**

That the petition for review herein be, and the same hereby 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 29th day of May, 2013

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\sKenneth D. Duren, Assistant Administrator  
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 29, 2013.

Division of Health Care Access And Accountability