



STATE OF WISCONSIN  
Division of Hearings and Appeals

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FCP/149582

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed May 27, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Community Care Inc. in regard to Medical Assistance, a hearing was held on June 25, 2013, via phone.

The issue for determination is whether Petitioner has submitted evidence sufficient to demonstrate that the Family Care Program (FCP) should pay for a dynamic splinting system - Dynasplints.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Leslie Gannon

Community Care Inc.  
205 Bishops Way  
Brookfield, WI 53005

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Ozaukee County. He is a Family Care Program (FCP) participant.
2. Petitioner requested payment for Dynasplints for his right elbow and wrist by the FCP. That was denied.
3. Dynasplints are a dynamic splint. Per the Dynasplint web site (viewed with Petitioner permission for consideration in making this decision): 'Dynasplint® Systems aid in restoring physical function to patients with joint stiffness and limited range of motion. The key to its effectiveness is the low-load, prolonged-duration stretch (LLPS) that delivers a correct biological stimulus to

create a permanent length in shortened connective tissue. ...' <http://www.dynasplint.com/products/>. The cost is approximately \$2800.00 per splint. Though not well described here, it is apparent from Petitioner's physician's notes that it is right elbow and wrist splints that are requested here.

4. Petitioner is 18 years of age and lives in the community with family. His diagnosis is cerebral palsy. He also suffered from seizures when a child but was free of the seizures for about 10 years. Seizure activity returned about 1-2 years ago. He has had use of the requested splints via rental paid for by private insurance. Petitioner lost that private insurance as of February 29, 2012. Petitioner does receive Botox injections and has had a reduction in his passive range of motion.
5. The reasoning for the denial of the request for the Dynasplints is that the MCO concluded that they have not been shown to be medically effective and are not cost-effective equipment.

### DISCUSSION

The Family Care Programs Contract (found at [www.dhs.wisconsin.gov/mltc/2013/2013Contract.htm](http://www.dhs.wisconsin.gov/mltc/2013/2013Contract.htm)) does state that durable medical equipment as defined in Wisconsin Administrative Code, §DHS 107.24 can be a service provided by the family care program with prior authorization. The analysis as to whether to pay for requested durable medical equipment uses the member centered planning process rather than the medical necessity requirements of Wisconsin Administrative Code DHS Chapter 107. *Family Care Programs Contract Contract*, *Addendum XII. B*. The Wisconsin Administrative Code, at § DHS 107.24(2)(c), does categorize the splints as durable medical equipment.

The following is the analysis employed by the managed care organization (MCO) in deciding to deny payment for the requested equipment:

#### **F. Determining if Services, Procedures, Items and Treatments are Proven and Effective**

...

##### 2. *Services, procedures, items or treatments that are proven and effective*

A service, procedure, item or treatment is not considered experimental when it is proven and effective, generally accepted medical practice and clinically appropriate to treat the member's condition.

##### 3. *Determining if a service, procedure, item or treatment is proven and effective*

The MCO shall utilize a process to determine whether a service, procedure, item or treatment is proven and effective.

In this process, the MCO can consider:

- a. The current and historical judgment of the medical community as evidenced by medical research, studies, journals or treatises;
- b. The extent to which Medicare and private health insurers recognize and provide coverage; and
- c. The current judgment of experts and specialists in the medical specialty area or areas in which the service is applicable or used.

##### 4. *Coverage of proven and effective services, procedures, items or treatment that is cost effective*

After following the procedures outlined in this section, the MCO must cover services, procedures, items and treatments that the MCO has determined are proven and effective treatments for the conditions for which they are intended or used, if the services, procedures, items and treatments are cost effective.

*Contract, §VII. F.*

In denying this request the MCO concluded that the requested splints have not been demonstrated to be medically effective nor are they cost-effective. MCO notes that Petitioner had use of the splints for 9 months but actually lost range of motion. The MCO notes that it agrees that Petitioner needs a right elbow and wrist support but that static splints, at a cost of approximately \$245, would be an appropriate level of service for Petitioner and that a home exercise program the key to range of motion. The CMO

representatives indicated that a request for Dynasplints was made of the fee-for-service Medicaid program but was denied. There was no appeal of that denial in the Division of Hearings and Appeals data base and no other information available. The MCO also submitted an article from Aetna Insurance that states that it considers dynamic splints to be experimental for cerebral palsy. Finally, the Dynasplint Company will not provide a credit to the MCO for the rental expense paid by Petitioner's private insurance.

Evidence offered on behalf of Petitioner indicates that he suffers from increased tone<sup>1</sup> as result of his seizure activity which is contributing to, if not the only cause of, Petitioner's lost range of motion. The evidence indicates that Petitioner's physician has wants dynamic splints used in conjunction with his program of Botox injections. Petitioner representatives argue that the family care program will pay for physical therapy for Petitioner and that the dynamic splints are more cost effective than therapy. They also contend that Dynasplint is a preferred provider in the Medicaid program.

At this point I will note that the burden of proof by a preponderance of the evidence lies with Petitioner. This is a very close case. Nonetheless, I am persuaded that dynamic splints are warranted for Petitioner given the evidence in Petitioner's medical records that indicates that dynamic splints are needed in conjunction with the Botox injections. Those physician notes do not, however, state that Dynasplint is the only manufacturer. In fact, the notes state that Petitioner's mother has been working with Dynasplint and the MCO to find coverage for the Dynasplints "...or other braces that could provide the same therapeutic intervention." Part of Exhibit # 2, progress note from May 23, 2013 by Dr. John McGuire, Froedtert Health Clinics. Further, the Aetna Insurance submission (Part of Exhibit #2) does list other dynamic splinting systems.

I am, therefore, authorizing a dynamic splinting system for Petitioner's right elbow and right wrist but I am not mandating that the MCO provide payment for the Dynasplint at this point. Quite frankly, there is simply not enough information in the record for the Division of Hearings and Appeals to make the determination that this is the only dynamic splinting system that will work with Petitioner's Botox treatments. The MCO will, therefore, have to work with Petitioner to identify the most cost effective dynamic splinting system that will be medically effective for Petitioner. I recognize that this may precipitate another hearing request but without better evidence it is inappropriate for the Division of Hearings and Appeals to conclude that the Dynasplints are the only effective dynamic splinting system that is medically effective for Petitioner.

#### **CONCLUSIONS OF LAW**

1. That the evidence offered on behalf of Petitioner is sufficient to demonstrate that a dynamic splinting system is medically necessary for his right wrist and right elbow.
2. The evidence offered on behalf of Petitioner is not sufficient to demonstrate that the Dynasplint system is the only dynamic splinting system medically effective and cost-effective for Petitioner.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the MCO with instructions to take the steps necessary to identify a cost effective and medically effective dynamic splinting system for Petitioner's right wrist and elbow and, if acceptable to Petitioner, to take the steps necessary to have those dynamic splints ordered for Petitioner. This must be done within 10 days of the date of this decision.

---

<sup>1</sup> From prior experience with CP cases, the undersigned understands this to be either hypotonic – decreased resistance to movement or hypertonic - increased resistance to passive movements. This case involves hypertonic tone.

**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 Milwaukee,  
Wisconsin, this 15th day of August, 2013

---

\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Wayne J. Wiedenhoef, Acting Administrator  
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 August 15, 2013.

Community Care Inc.  
Office of Family Care Expansion