



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

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In the Matter of

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

DECISION

MPA/151825

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 3, 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 October 22, 2013, at Eau Claire, Wisconsin.

The issue for determination is whether the petitioner is entitled to medical assistance reimbursement for a bath/shower chair.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[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: Mary Chucka

Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner is a resident of Eau Claire County.

2. On August 2, 2013, the petitioner requested a Columbia PVC Tilt Bath Chair at a cost of \$607. This chair would allow her to use her whirlpool. The Office of Inspector General denied her request on August 14, 2013.
3. The petitioner is a 23-years-old woman who has had meningitis and has cerebral palsy.
4. The petitioner cannot transfer herself and relies upon others for her activities of daily living. She moves about in a power wheelchair and is transferred by a stand-to-sit lift..
5. The petitioner has a shower/commode chair and a Hoyer lift. Her shower/commode chair does not allow her to use her whirlpool but allows her to do everything else the chair she requests would.
6. The petitioner suffers from skin breakdown. The requested chair tilts, but she has presented no evidence that her skin would break down while she is in her whirlpool.

### DISCUSSION

The petitioner requests a reclining bath chair. This is a type of durable medical equipment the Division of Health Care Access and Accountability must authorize before the medical assistance program will pay for it. *See* Wis. Adm. Code § DHS 107.24. 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. Adm. Code, § DHS 107.02(3)(e)1.,2.,3.,6. and 7. "Medically necessary" means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
  1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's 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;
  3. Is appropriate with regard to generally accepted standards of medical practice;
  4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
  5. Is of proven medical value or usefulness and, consistent with s. HFS 107.035, is not experimental in nature;
  6. Is not duplicative with respect to other services being provided to the recipient;
  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.

Wis. Adm. Code, § DHS 101.03(96m).

The medical assistance program only covers equipment on the durable medical list. Wis. Admin. Code, § DHS 107.24(2)(b). Whirlpools and hot tubs are not on this list. *Revised List of Noncovered Durable Medical Equipment and Supplies Wisconsin Medicaid and BadgerCare Update, No. 2004-75*, <https://www.forwardhealth.wi.gov/kw/pdf/2004-75.pdf>.

The petitioner is a 23-year-old woman diagnosed with cerebral palsy. She relies on others for all of her activities of daily living. She already has a chair that allows her to use her shower. The requested chair is needed solely because it would allow her to use her whirlpool, which she claims relaxes her tight muscles. (There was some evidence that she has problems with her skin breaking down. Skin breakdown is less likely to occur in a chair that tilts, but she is not obese, and there is no evidence that her skin would break down in the relatively short time she spends in a whirlpool.) The Office of Inspector General agrees that a whirlpool provides health benefits but contends it provides these benefits to everyone, disabled or not. This is true. But some people, including perhaps the petitioner, may require some of the benefits provided by a whirlpool, such as the relaxation of tight muscles, just to function. Nevertheless, because the sole purpose of the requested chair is to allow her to use a whirlpool, the chair is medically necessary only if a whirlpool is also medically necessary. The Division of Health Care Access and Accountability's written policy has specifically determined that a whirlpool is not. Although a fair hearing allows me to review the Division's prior authorization decisions, when doing so I must follow the Division's properly enacted rules and regulations. Its list of items that it does and does not cover is specifically authorized by Wis. Admin. Code, § DHS 107.24(2)(b), which, as an administrative code provision, has the same force as a statute enacted by the legislature. Because the Division has specifically excluded a whirlpool from the items that are covered as medically necessary, regardless of the facts of the particular case, a piece of durable medical equipment whose sole purpose is to allow the use a whirlpool must also be determined to be not medically necessary, regardless of the facts of the particular case. Therefore, I must uphold the Office of Inspector General's decision to deny approval of the requested bath and shower chair.

### **CONCLUSIONS OF LAW**

The Office of Inspector General correctly denied the requested bath and shower chair because it duplicates equipment the petitioner already has and it is not medically necessary.

**THEREFORE, it is**

**ORDERED**

The petitioner's 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 13th day of November, 2013

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\sMichael D. O'Brien  
Administrative Law Judge  
Division of Hearings and Appeals



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

Brian Hayes, 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 November 13, 2013.

Division of Health Care Access And Accountability  
[tedm@reliantrehab.com](mailto:tedm@reliantrehab.com)