



FH

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

---

In the Matter of

██████ ██████  
c/o ██████ ██████  
██████  
██████

DECISION

MPA/152011

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed September 11, 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 24, 2013, at New Richmond, Wisconsin.

The issue for determination is entitled to medical assistance reimbursement for orthotics.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

██████ ██████  
c/o ██████ ██████  
██████  
██████

Respondent:

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

By: Pamela Hoffman

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 St. Croix County.
2. On July 30, 2013, the petitioner with ██████ ██████ requested custom foot orthotics at a cost of \$809.50. The Office of Inspector General denied the request on August 22, 2013.

3. The petitioner is diagnosed with Rett Syndrome and pes planus (flat feet). She has low tone and poor foot placement. Her condition had been treated with ankle-foot orthotics, but they cause her ankles to bleed.
4. The requested orthotics are requested to stabilize the petitioner's foot and provide arch support.
5. The petitioner has not had foot or ankle surgery and she has no gross foot deformity.

### DISCUSSION

The Division of Health Care Access and Accountability denied the petitioner's request for foot orthotics. Section DHS 107.24(4)(f) of the Wisconsin Administrative Code states:

Orthopedic or corrective shoes or foot orthoses shall be provided only for postsurgery conditions, gross deformities, or when attached to a brace or bar. These conditions shall be described in the prior authorization request.

“Arch supports are not considered a brace.” Wis. Admin. Code, § DHS 107.24(2)(c)2. Medical assistance regulations specifically prohibit coverage of foot orthoses 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;

Wis. Adm. Code, § DHS 107.24(5)(a).

The petitioner is a four-year-old girl diagnosed with Rett Syndrome, a rare neurological disorder that progressively affects movement, coordination and communication. She has pes planus, low tone, and poor foot placement. Pes planus is a medical term for flattened arches. She has been using ankle-foot orthotics, but these have dug into her ankles, causing them to bleed. She now requests a shoe insert to replace her AFOs and stabilize her foot.

I have little doubt after hearing the testimony and reviewing the documentation that the requested insert would do what the petitioner's parents and her provider contend it will do. Nevertheless, there are some circumstances when the Medicaid program will not pay for certain items, regardless of the benefits they provide. I have no authority to ignore these regulations. The petitioner has not had any surgery on her foot or ankle, so the orthotics are not for a post-surgery condition. Although her feet and ankles are instable, she has no gross foot deformity; rather she has weakness and flat feet, a condition for which foot orthotics are specifically excluded. Finally, the requested orthotics are not attached to a brace or a bar. Therefore, although they provide some medical benefit to her, I must uphold the Office of Inspector General's denial.

### CONCLUSIONS OF LAW

The Office of Inspector General correctly denied the requested orthotics because they are not for a post-surgery condition, gross foot deformity, or attached to a brace or bar.

**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 14th day of November, 2013

---

\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 14, 2013.

Division of Health Care Access And Accountability