



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION

MPA/152734

PRELIMINARY RECITALS

Pursuant to a petition filed October 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 telephone hearing was held on November 20, 2013, at Madison, Wisconsin.

The issue for determination is whether petitioner is eligible for payment by the MA program for Rifton hi-lo activity chair.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Represented By:

[REDACTED] [REDACTED]

Respondent:

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

By: Mary Chucka, OTR, Occupational 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 is a resident of Milwaukee County. She is 4 years old and is certified as eligible for Medical Assistance.

2. The petitioner has a history of bilateral (in utero) cerebral infarcts; cystic encephalomalacia; global developmental delays; infantile spasms/seizures; vocal cord dysfunction; and failure to thrive; poor weight gain; a history of otitis media; evidence of silent aspiration with a risk of pneumonia and sepsis. At 4 years of age, she weighs 25 lbs. and is 36 inches tall. She had a G-tube placed in the summer of 2012. She has had two seizures this year; and does take an anti-seizure medication. She does not walk, and she is carried around as her primary means of locomotion. The family uses a heavy duty Otto Bock Kimba stroller to move her from one location to another in addition to carrying her. The Kimba stroller was provided by MA in 2011 to meet the petitioner's identified positioning and mobility base needs. At the time, the provider indicated in the PA Request for the stroller that it would be used "in the home".
3. The petitioner's mother reports that the Kimba stroller is too big and bulky for effective use *within* the home.
4. The petitioner has a manual wheelchair; uses a standing frame that is on loan from her school system; has a thoracic lumbar sacral orthosis; has bilateral ankle-foot orthotics; is totally dependent in all cares including feeding, transferring, dressing, bathing, toileting, and grooming; and receives 24/7 attendant care from her mother.
5. The petitioner is dependent for functional weight shift; and her muscle tone fluctuates. Her range of motion is within functional limits; she requires a significant amount of secondary support to keep her upright, midline and to keep her pelvis neutral. She frequently gets too tired to hold her head up, and the Rifton hi-low will help provide postural support. It can also be tilted in space after seizure to assist caregivers in providing care.
6. The petitioner has access to an activity chair at her school; it does not belong to her; and the school will not loan it to her or her family for use at home.
7. The Otto Bock Kimba stroller was provided by Medical Assistance in 2011. It possess very similar if not the same positioning features as the Rifton hi-lo activity chair. It offers effective positioning and mobility to the child. The Kimba Size 2 and the Rifton hi-lo Size 2 activity chair are less than ½ inch different in width (27.75" vs. 27.5", respectively.)
8. On August 8, 2013, the petitioner's provider requested prior authorization for MA coverage of Rifton hi-lo activity chair, at a listed cost of \$7,032. The tilt feature alone costs \$3,069.90.
9. The Division of Health Care Access and Accountability denied the prior authorization request on August 28, 2013, because the requested equipment is not covered by the MA program unless documentation establishes that it is medically necessary; and the Department's Occupational Therapy Consultant determined the clinical evidence submitted did not establish medical necessity.
10. On October 11, 2013, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the DHCAA denial of the Rifton hi-lo chair reimbursement.

DISCUSSION

The Division of Health Care Access and Accountability may only reimburse providers for medically necessary and appropriate health care equipment listed in Wis. Stat. §§ 49.46(2) and 49.47(6)(a), as implemented by Wisconsin Administrative Code Chapter DHS 107. Some (services and) equipment are covered if a prior authorization request is submitted and approved by the DHCAA in advance of receiving the service. Finally, some services and equipment are never covered by the Medical Assistance program. The requested Rifton hi-lo activity chair in this case is not covered by the MA program per Wis. Admin. Code § HFS 107.02(3)(e). Rather, it appears duplicative of the existing combination of the Otto Bock Kimba stroller used at home, and the activity chair used at school. It is also not the least expensive alternative. For example, given that the petitioner has had 2 seizures in the past year, the addition of a

\$3,000 tilt feature (presumably powered) seems to be far in excess of what would be need to tilt a child weighing 25 lbs. See, Wis. Admin. Code §DHS 101.03(96m). I am not unsympathetic to the desire to have a higher activity chair for use in the home, but this model with these features is far too costly for MA to deem medically necessary in light of that simple fact. The Division was therefore unable to approve the requested service.

The petitioner and her payments may file a new Prior Authorization Request for an activity chair at any time in the future, justifying the medical necessity for the requested item of durable medical equipment. Equipment covered by MA is generally required to meet requirements of basic medical necessity in the primary item and every requested accessory component.

CONCLUSIONS OF LAW

The MA program does not provide payment as requested by the petitioner.

THEREFORE, it is **ORDERED**

That the petition for review 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 22nd day of November, 2013

\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 November 22, 2013.

Division of Health Care Access And Accountability