



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MPA/152604

PRELIMINARY RECITALS

Pursuant to a petition filed October 07, 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 December 16, 2013, at Wautoma, Wisconsin.

The issue for determination is whether the Department erred in its modification of PA request # [redacted] for a prosthesis.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Pamela Hoffman, PT, DPT, MS (in writing)
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Waushara County. He is approximately 50 years old. His right leg was amputated. Petitioner has a long work history as a carpenter. He climbed ladders, stairs, and negotiated uneven surfaces. His hip strength and flexion in his right

limb is excellent, as is his strength in his contralateral left leg. Petitioner has full range of motion of his remaining limbs.

2. Petitioner intends to continue work and is not otherwise inhibited from performing the same or similar related work in the future. This work would include presence on jobsites and negotiating varying terrain.
3. When a person is fitted for artificial limb, they first get a preparatory prosthesis and then are moved into a definitive prosthesis. It is preparatory prosthesis that is involved here.
4. The provider, [REDACTED], Inc., filed a request for prior authorization on August 7, 2013 for a temporary prosthesis (see ex. #1).
5. The Department modified the PA request on August 26, 2013 (see ex. #1).
6. Petitioner appealed.

DISCUSSION

The Division of Health Care Access and Accountability may only reimburse providers for medically necessary and appropriate health care services and equipment listed in *Wis. Stat. §§ 49.46(2) and 49.47(6)(a)*, as implemented by *Wis. Admin. Code, Ch. DHS 107*. Some services and equipment require submission and approval of a written prior authorization request by the provider. Some services and equipment are never covered. *See, generally, Wis. Admin. Code, DHS §107.18*. Prosthetics are considered to be durable medical equipment requiring prior authorization. *Wis. Admin. Code, DHS, §107.24*.

When determining whether to approve any prior authorization, the Office of Inspector General (OIG) must consider the generic prior authorization review criteria listed at *Wis. Admin. Code, DHS § 107.02(3)(e)*. Those criteria are:

(e) *Departmental review criteria*. In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.

The Wisconsin Administrative Code does define the term ‘medical necessity’. It is a service that:

“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. Admin. Code, §DHS 101.03(96m).

I also note the approval criterion from the Prior Authorization Guideline Handbook at § 140.C.001.02 which allows for approval of a prosthesis when “the recipient is a constant active ‘user’ of the prosthesis, i.e., vocational involvement (recipient has physically stressful occupation such as farming, construction) or educational involvement...” This rationale is compelling and indicates a policy to allow a person to maintain certain level of paid occupation or continued educational efforts). Petitioner has a history as a skilled carpenter.

As with most public assistance benefits the initial burden of demonstrating eligibility for any particular benefit or program at the operational stage falls on the applicant, *Gonwa v. Department of Health and Family Services, 2003 WI App 152, 265 Wis.2d 913, 668 N.W.2d 122 (Ct.App.2003)*. In other words, it is Petitioner’s burden to demonstrate that he qualifies for the requested prosthesis by a preponderance of the evidence. It is not the DHCAA’s burden to prove that he is not eligible. Further, I note that Medicaid is meant to provide the most basic and necessary health care services at a reasonable cost to a large number of persons and must authorize services according to the Wisconsin Administrative Code definition of medical necessity and other review criteria noted above. I specifically do not find or base this case on a rationale that Medicaid must return a person to the position that they were in prior to the injury or disability. I find such a blanket argument, as made by petitioner’s counsel, absurd and a far too “creative” interpretation of program rules. I decide this case only on the specific facts.

The OIG submitted a detailed letter explaining its rationale for this denial. The Department did not find that Petitioner’s request met the Department review criteria set forth in the Wisconsin Administrative Code and reproduced above. The Department found that the requested items and services were not necessary or cost-effective. The Department argued that the basic level prosthesis was adequate as it would allow petitioner to perform typical activities of daily living. The Department did not argue that the basic prosthesis would allow petitioner to perform any or all of the activities that he performed in his occupation prior to his amputation.

The petitioner established that he will require a high-end prosthesis to return to his past employment and engage in his past activities. Before losing his leg, he worked as a skilled carpenter. This required him to walk up and down ladders, in between support members, and over and around various materials. He testified that he intends to return to this employment. One can argue that it is not medically necessary for the petitioner to engage in his leisure activities in the most comfortable manner possible. However, from a purely economic standpoint, a more advanced leg is cost-effective because by holding a skilled, high-paying, in-demand job the petitioner will pay more in taxes to the state and federal governments that fund

the leg and be less likely to receive service such as medical assistance, FoodShare, and unemployment from them.

Of course, an expensive leg is necessary only if the petitioner will actually return to his former job, or a similar one, and lifestyle and use the leg. Statements about good intentions are easy to make and easier to forget. Nevertheless, I find his assertions credible. He testified credibly regarding his work history. His obvious strength establish that he will be physically able to use the requested leg.

Based upon this, I find that the petitioner has shown that he will be a constant active user of the requested K3 leg and that the request is medically necessary and cost effective. Therefore, it can be approved.

Finally, I note for Petitioner that his provider may not receive a copy of this Decision. Petitioner may provide a copy of this Decision to the provider.

CONCLUSIONS OF LAW

That the petitioner is entitled to the requested K3 artificial leg because it is medically necessary and cost-effective.

NOW, THEREFORE, it is ORDERED

That the petitioner's durable medical equipment provider may provide the petitioner with the prosthesis requested in Prior Authorization Request No. [REDACTED] and may submit a claim to the Department's fiscal agent for payment. A copy of this order should accompany that claim.

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, Room 651, 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 January, 2014

\sJohn P. Tedesco
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 January 13, 2014.

Division of Health Care Access and Accountability
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