



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

In the Matter of

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

DECISION

MPA/154612

PRELIMINARY RECITALS

Pursuant to a petition filed January 08, 2014, 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 ["DCHAA"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on February 25, 2014.

The issue for determination is whether petitioner is eligible for payment by the MA program for the gait trainer requested in PA # ██████████.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████ ██████████ (not present at February
25, 2104 Hearing)
c/o ██████████ ██████████
██████████
██

Petitioner's Representative:

██████████ ██████████, ATP
██
██
██

Respondent:

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

By: Pamela J. Hoffman, PT, DPT, MS [Ms. Hoffman did not appear at the
February 25, 2014 Hearing, but submitted a letter dated January 23, 2014.]

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

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (1 year and 4 months old) is a resident of Winnebago County, Wisconsin.
2. Petitioner was born pre-term at 35 & 5/7 weeks; she was diagnosed at birth with hyperekplexia; she is fed via a G-tube; she is very limited in her ability to perform independent mobility; she requires assistance to maintain sitting balance and is not able to stand without physical assistance; she can tolerate standing with a gait trainer but is not demonstrating stepping.
3. Even without a gait trainer for her personal use at home (she has the use of a gait trainer at the Physical Therapy ["PT"] Clinic) petitioner is making progress; she has demonstrated progress in the areas of sitting balance, rolling, and supported stepping; she is demonstrating emerging stepping skills and it is anticipated that she will begin to demonstrate improved stepping and forward propulsion of the walker within the next several weeks/months.
4. On December 17, 2013 petitioner's provider, [REDACTED] of Appleton, Wisconsin, requested prior authorization (P.A. # [REDACTED] dated December 17, 2013) for MA coverage of a gait trainer (a walker with trunk support) for petitioner at a cost of \$2,100.00.
5. On December 18, 2013 DCHAA denied PA request # [REDACTED] for a gait trainer for petitioner; DHCAA sent petitioner a letter dated December 18, 2013 and entitled *BadgerCare Plus Notice of Appeal Rights* informing petitioner of the denial.

DISCUSSION

By law, MA pays only for medically necessary and appropriate health care services when provided to currently eligible MA recipients. Wis. Admin. Code §§ DHS 107.01(1) & 107.16(1) (May 2009); See also, Wis. Stat. §§ 49.46(2) & 49.47(6)(a) (2011-12). In order for a service to be *medically necessary* it must meet several specific requirements. See, Wis. Admin. Code § DHS 101.03(96m) (December 2008). One of the specific requirements for *medical necessity* is that the requested service must be required to prevent, identify, or treat a recipient's illness, injury, or disability. Wis. Admin. Code § DHS 101.03(96m)(a) (December 2008). As with any eligibility denial, the burden is on petitioner to show that she is eligible for the requested services. *Lavine v. Milne*, 424 U.S. 577, 583-584 (1976). Under these standards, petitioner has failed to show that the requested gait trainer is medically necessary.

As noted in the above *Findings of Fact*, petitioner is not able to stand without physical assistance. She can tolerate standing with a gait trainer but is not demonstrating stepping. She is demonstrating emerging stepping skills and it is anticipated that she will begin to demonstrate improved stepping and forward propulsion of the walker within the next several weeks/months. Further, even without a gait trainer for her personal use (she has the use of a gait trainer at the PT Clinic) petitioner is making progress. Thus, a gait trainer is not required to prevent, identify, or treat petitioner's disability at this time. Petitioner may have her provider file a new PA request once she begins to demonstrate stepping.

CONCLUSIONS OF LAW

For the reasons discussed above, petitioner is not eligible for payment by the MA program for the gait trainer requested in PA # [REDACTED].

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby 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, 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 March, 2014

\sSean P. Maloney
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 March 13, 2014.

Division of Health Care Access and Accountability
tedm@reliantrehab.com