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

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In the Matter of

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

DECISION

MPA/154925

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 15, 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 in regard to Medical Assistance, a hearing was held on March 03, 2014, at Sparta, Wisconsin.

The issue for determination is whether the Department erred in its denial of the PA request (# ██████████) for a car seat.

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, 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 is a resident of Monroe County.

2. On November 13, 2013, the Department received the PA request at issue in this case. The request was submitted by National Seating and Mobility and requested approval of a car seat at a cost of \$2,356.
3. The request indicated that petitioner is two years old, 28 pounds, and 35 inches tall.
4. The Department denied this request on November 25, 2013.
5. Petitioner appealed.

### DISCUSSION

Some services and equipment are covered if a prior authorization request is submitted and approved by the Division in advance of receiving the service. The MA program in this case would cover the requested Special Needs Car Seat if it met the requirements of medical necessity as defined in §DHS 101.03(96m), Wis. Admin. Code.

When determining whether a service is necessary, the division must consider, 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. DHS § 107.02(3)(e), Wis. Adm. Code.

“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. DHS 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).

Relying on the above policy, the Division found that petitioner’s request did not meet those requirements because: (1) more cost effective alternatives are available for transportation; and (2) Wisconsin law requires children under 4 years old, 40 inches and 40 pounds to be in car seats for transportation and car seats that meet these needs are available commercially. Specifically, the Department argues that infants can ride in rear facing car seats and such rear-facing car seats are available for a child of petitioner’s age and size.

In its March 12, 2014 letter, the Department indicated that a rear facing car seat can be used by infants without head, neck, and trunk control. I fully understand that a true infant car seat is likely too small for

petitioner. But, convertible car seats are available that may work. For example, the Britax Advocate (view at: <http://www.britaxusa.com/car-seats/advocate>) indicates that it is appropriate for rear-facing seating for a child up to 40 pounds. It can be reclined and appears to have significant head protection and bolsters, and a 5-point harness. This is only one example that could be an option. The retail price for this item is \$379.

The burden at hearing is on petitioner to establish the medical necessity and cost-effectiveness of an item. In this case, no one appeared to testify for petitioner to explain why a seat such as the Britax, or others like it, are not feasible. I understand that it may not be ideal, but as cost-effectiveness must be a consideration, if the Britax could accomplish 80 percent of what the requested item can accomplish, then the Britax may be the more appropriate choice.

While the requested item may be the best choice, I cannot find that based on this record. The petitioner will need to adequately rebut the Department's suggested alternatives with testimony or documentation overcoming the burden petitioner has at such a hearing. Telephone testimony of the physical therapist, Ms. [REDACTED], would likely have been quite helpful. Instead, [REDACTED] submitted a written summary indicating objection to a convertible car seat called the Graco Odyssey. At least two objections are prospective indicating that petitioner will grow and need a larger seat. But, I am not concerned with what petitioner will need a year from now. If a \$200 dollar car seat will be adequate now then I cannot find that denial is an error. [REDACTED] also argues that the convertible car seat does not "have sufficient lateral support for the head and trunk." This is an interesting argument and it could be persuasive. But, I must question how this Graco Odyssey or the Britax Advocate could be deemed appropriate for a 4 pound infant in the case of the Graco or a 5 pound infant in the case of the Britax if they lack support. These are not toddler seats only. Without an appearance and a compelling explanation in rebuttal, I cannot overturn the Department's denial.

### **CONCLUSIONS OF LAW**

The Department did not err in denying the PA request for a car seat because petitioner did not establish medical necessity and cost-effectiveness.

**THEREFORE, it is**

**ORDERED**

That this matter is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 28th day of March, 2014

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\sJohn P. Tedesco  
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 March 28, 2014.

Division of Health Care Access and Accountability