



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

In the Matter of

█ █
c/o █ █
█ █
█ █

DECISION

MPA/155057

PRELIMINARY RECITALS

Pursuant to a petition filed January 27, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Office of the Inspector General (OIG) in regard to Medical Assistance, a telephonic hearing was held on March 19, 2014, at Appleton, Wisconsin.

The issue for determination is whether the Department correctly denied the petitioner’s prior authorization (PA) request for the purchase of a manual wheelchair because the PA did not establish with sufficient medical documentation the appropriateness and medical necessity of such wheelchair.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

█ █
c/o █ █
█ █
█ █

Petitioner's Representative:

█ █, provider rep
█ █
█ █
█ █

Respondent:

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

By: Mary Chucka, occupational therapy consultant
Office of the Inspector General (OIG)
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 25 year old resident of Outagamie County who resides in an adult family home where needed assistance is provided 24 hours per day. She is certified for MA.
2. The petitioner is diagnosed with infantile cerebral palsy.
3. The petitioner attends a Cerebral Palsy (CB) Center five days per week. Petitioner's PA request did not include any care plan for the services that petitioner receives at the CB center nor whether petitioner is able to have any mobility at that center.
4. During about October, 2013, petitioner developed a pressure ulcer which apparently healed as of about October 28, 2013.
5. The petitioner has been using a manual wheelchair which is "on loan" from [REDACTED] [REDACTED].
6. The petitioner is 5 foot 6 inches tall and weighs about 135 pounds.
7. On or about December 19, 2013, the petitioner's provider, [REDACTED] [REDACTED], requested prior authorization (PA) for MA purchase of an Invacare Tracer SX5 manual wheelchair and a wheelchair cushion at a total cost of \$892.00. See Exhibits 2.
8. The Office of the Inspector General (OIG) denied the petitioner's prior authorization request Claim # [REDACTED] for the purchase of a manual wheelchair for the following reasons: a) the PA request does not confirm that the requested manual wheelchair will be needed on a long term basis; b) the PA does not establish that the manual wheelchair is the most appropriate equipment if the petitioner does require the use of a wheelchair indefinitely; c) the overall health benefits of weight-bearing in standing and ambulating, even if for only short distances should not be jeopardized for the petitioner; d) the petitioner is only 25 year old, and if there are no permanent physical reasons that she is not able to walk, it would seem appropriate to work with her to improve her abilities as much as possible with ambulation and transfers; and e) the underlying reason for petitioner's inability to walk has not been determined. See Exhibit 1.

DISCUSSION

Pursuant to Wis. Admin. Code, §DHS 107.24(2)(c)8, wheelchairs may be provided under the MA program when prescribed by a physician. However, the MA program does not cover items that are for the comfort or convenience of the recipient, or items that do not contribute to the improvement of the recipient's medical condition as such items are not considered medically necessary.

State regulations control the decision-making process of the OIG in reviewing prior authorization requests, and the criteria was properly referenced by the OIG in the denial letter to the petitioner. Wis. Admin. Code, §DHS 107.02(3)(e) states, in relevant part, as follows:

In determining whether to approve or disapprove a request for prior authorization, the Department shall consider the following criteria:

1. **The medical necessity of the service;**
2. **The appropriateness of the services;**
3. The cost of the service; . . .
5. The extent to which less expensive alternatives are available; . . .
7. **The effective and appropriate use of available services; . . .**
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations including Medicare or private insurance guidelines.

"Medically necessary" is defined as a medical assistance service under Chapter 107, Wis. Adm. Code which is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability;
- (b) Meets the following standards:
 - 1. **Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipients 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; . . .
 - 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.**

(Emphasis added).

"Medically necessary" is therefore more of a *legal* term as opposed to a *medical* term. The specific term "medically necessary" is identified in the above rules of the state administrative code. Therefore, while a medical professional or provider may conclude an item is "medically necessary", it is the OIG which must adjudicate the request and determine whether the item or service for which payment is sought meets the legal definition of "medically necessary."

In this case, OIG consultant Mary Chucka explained that OIG denied the petitioner's PA request for purchase of a manual wheelchair because the petitioner's representative and the PA failed to establish with sufficient documentation that the requested wheelchair was appropriate to meet her medical needs. On page 3 of her February 11, 2014 denial summary, Ms. Chucka stated in pertinent part:

The OIG finds that the PA request is wholly inadequate with respect to documentation to justify purchase of a manual wheelchair for the member. The OIG comments that the member is only twenty-five years of age. In absence of documentation to the contrary it appears she has been ambulatory up until 'recently.' And the PA request is completely deficient in including any other medical reports that would identify why she is not ambulatory at this time. There is only brief mention of 'behavioral issues.' There is a recommendation that she will attempt physical therapy but there are no reports of that service.

Again, the OIG respectfully comments that the member is only twenty-five years of age. If there are no permanent physical reasons that she is not able to walk, it would seem appropriate to work with the member and all of the individuals that work with her to improve her compliance with ambulation and transfers. It is the opinion of the OIG that at her age, it does not appear appropriate to not address the reasons why she is not more ambulatory, and allow the member to use a manual wheelchair for all of her mobility needs. Again, without other reports to confirm that all avenues to improve the member's ambulatory status has been tried and were found to be unsuccessful, purchase of a manual wheelchair does not appear to be appropriate at this time. The overall health benefits of weight-bearing in standing and ambulating, even if for only short distances should not be jeopardized for the member.

During the March 19, 2014 hearing, petitioner's representative, [REDACTED] [REDACTED] [REDACTED], was unable to provide any further documentation whatsoever that a manual wheelchair is the appropriate medical equipment for the petitioner. Mr. [REDACTED] simply argued that no one knows why the petitioner is unable to walk (why she is unable to bear any weight), and thus the only alternative is for petitioner to use a wheelchair whether purchased or rented from [REDACTED] [REDACTED]. Such argument is not convincing. Furthermore, Mr. Chucka raised several legitimate questions regarding the lack of sufficient investigation to determine medically the reason for why petitioner is unable to walk, especially given that the foot ulcer apparently healed many months ago. See February 11, 2014 OIG summary letter, pages 3 and 4.

In an application for PA benefits, the petitioner has the initial burden of proof to establish that her PA request for MA purchase of a manual wheelchair was medically necessary and appropriate. As explained above, the petitioner's PA and her representative failed to establish its initial burden to document that the purchase of a manual wheelchair was appropriate at this time for the petitioner. Accordingly, based upon the above, I conclude that the Department correctly denied the petitioner's PA request for the purchase of a manual wheelchair because the petitioner did not meet her burden of proof to establish with sufficient medical documentation the appropriateness and medical necessity for such purchase.

As dicta, the petitioner may wish to submit to OIG a new PA for a rental wheelchair for the short term.

CONCLUSIONS OF LAW

The Department correctly denied the petitioner's PA request for the purchase of a manual wheelchair because the petitioner did not meet her burden of proof to establish with sufficient medical documentation the appropriateness and medical necessity for such purchase.

THEREFORE, it is

ORDERED

The petition for review herein be and the same is hereby 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 23rd day of April, 2014

\sGary M. Wolkstein
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
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on April 23, 2014.

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