



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION

MPA/157092

PRELIMINARY RECITALS

Pursuant to a petition filed April 21, 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 June 03, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly denied the Petitioner’s Prior Authorization (PA) request.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

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

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Respondent:

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

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

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. Petitioner is a 4 year old boy with congenital bilateral high forearm amputation.

3. Petitioner has passive bilateral upper extremity prostheses which he has had for approximately three years.
4. On February 26, 2013, the agency approved a PA request for the Petitioner for the purchase of myoelectric bilateral prosthetic equipment. On May 30, 2013, the agency approved a PA request for the Petitioner for the purchase of a myoelectric pediatric hand. On December 19, 2013, the agency approved a PA request for the Petitioner for the purchase of production gloves.
5. On November 1, 2012, the Petitioner had a functional occupational therapy (OT) evaluation. The evaluation was submitted in support of Petitioner's PA request for additional myoelectric equipment in February and May, 2013. The evaluation noted that the Petitioner's shoulder and trunk strength is fair to good for his current activity level but that strengthening is anticipated when prostheses are upgraded. His movement is noted to be age appropriate. Without UE prostheses, Petitioner is noted to be able to ambulate independently, use his foot to hold a pen/crayon and turn pages of a book, use toes to pick up small toys, use available arms to catch a ball, assist in dressing. He was noted to be unable to bring his arms to his face/mouth. With bilateral passive UE prosthetics, Petitioner was noted to be able to pick up a cup, activate cause and effect toys, take off socks and shoes, lift up and carry large soft toys, pick and swipe his iPad and computer screen. He is unable to bring a cup to his mouth, feed himself, brush his teeth, wash his face, dress/undress, open/close doors, use a computer keyboard or mouse. With the myoelectric prostheses, he is able to open/close his hand to pick up and release small objects, hold a large crayon/marker to draw. He was not able to reach his head, face/mouth, chest or torso for functional ADL activities due to lack of elbow bend in the prostheses.
6. The documentation submitted by the provider with the February and May, 2013 PA requests state that with the requested prostheses, Petitioner will be able to wash face, brush teeth, comb hair, button and zipper clothing, put on socks, tie shoes, prepare a light meal, drink from a cup toilet, use a fork and spoon, cut meat with a knife and fork, pour from a can, write his name legibly, use a scissors, open a door with a knob, use a key in a lock, carry a laundry basket, dial a phone, fold a towel, open an envelope and stir a bowl. It was also noted that the prostheses would allow him improved operation with public interaction, increased and improved grasping function and increased functional range of motion.
7. Petitioner wears his myoelectric prostheses for approximately 4 hours/day on days he attends school. He wears his passive arms at other times.
8. Petitioner is currently receiving outpatient physical and occupational therapy to improve his upper body strength. He also participates in a home exercise program.
9. On January 9, 2014, an evaluation of the Petitioner was performed by the provider, Hanger Clinic. It notes that the Petitioner wears his myoelectric prostheses for approximately 5 – 10 hours/day. It indicates that his current prostheses work fine but he is in need of a set of prostheses without elbow joints and passive hands to wear playing outside,, getting dirty, in the pool, etc. It reports that the Petitioner has difficulty with riding a bike, catching a ball, balancing on a beam, digging in the sand and other child related activities.
10. The PA request submitted on February 24, 2014 indicates that member has "normal mobility, strength and coordination." It indicates that he also needs help with self-care. It indicates the request is being made to "allow him to play without fear of damage to the elbow joints and myoelectric hand."
11. On March 7, 2014, the agency denied the Petitioner's PA request.
12. On April 21, 2014, an appeal was filed on behalf of the Petitioner with the Division of Hearings and Appeals.

DISCUSSION

The agency 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 the Wisconsin Administrative Code, chapter DHS 107.

The administrative code provision governing durable medical equipment provides, in relevant part, as follows:

DHS 107.24. Durable Medical Equipment and Supplies . . .

(2) COVERED SERVICES . . . (c) Categories of durable medical equipment. The following are categories of durable medical equipment covered by MA:...

7. Prostheses. These are devices which replace all or part of a body organ to prevent or correct a physical disability or malfunction.

Prostheses must be reviewed under the general prior authorization criteria, including being medically necessary. Wis. Admin. Code, §DHS 107.02(3). Medically necessity is defined in pertinent part:

- (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; ...

8. ...[I]s cost effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; . . .

9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

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 equipment by a preponderance of the evidence. It is not the agency'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.

The agency denied the instant PA request because the Petitioner has received approval of a previous PA requests for bilateral prosthetic equipment to increase his independence in functional activities of daily living. It notes that the current request is for equipment that will be used only for specific activities identified as recreational-type activities. Because the Medicaid program reimburses only for basic and necessary medical expenses, the PA request was denied.

At the hearing, the Petitioner's mother and a family friend offered additional testimony. In addition to the arguments set forth in the documentation submitted with the PA request, the Petitioner's representatives

noted that the myoelectric arms tear frequently so that wearing the arms outside or for certain activities results in damage. They further noted that the passive arms he currently has are very small for him and are not proportional so it looks strange when he wears them. In addition, because the arms are too small, they cause irritation on his skin.

The Petitioner's representatives submitted additional written documentation that was not submitted with the PA request. Specifically, the Petitioner's OT and PT added information to the written documentation submitted with the PA request. The new documentation asserts that the Petitioner's increased use of his myoelectric arm will lead to skeletal/postural mal-alignment which will lead to scoliosis, pain, lack of muscle coordination and difficulty with ambulation. The providers did not appear to testify and no further information was provided to support that these medical conditions will result from increased use of the myoelectric arms. Without further information, I cannot make any conclusion about the accuracy or credibility of these statements. None of these conditions were asserted at the time the request for the myoelectric arms was made in 2013 nor at the time of the instant PA request.

The additional information did support the testimony of the Petitioner's representatives that the myoelectric arms are too heavy for the Petitioner to use as often as he would like to use them. He is currently participating in occupational and physical therapy to increase his upper body strength and learn to effectively use the arms. There is conflicting evidence presented with regard to whether the Petitioner will need to have both passive and myoelectric prostheses in the future with the Petitioner's representatives at the hearing indicating he will always need both and the orthopedic physician who submitted his written opinion dated April 23, 2014 indicating he does not anticipate the Petitioner will need both in the future.

The evidence submitted by the parties leads me to conclude that the agency properly determined there is no medical necessity for the current request for passive arms. The documentation submitted by the Petitioner's providers indicate that the only activities that the Petitioner is unable to perform with his current equipment are recreational in nature. While I understand the desire to have the arms for the reasons presented, the Medicaid program is meant to cover only basic and medically necessary equipment. The documentation submitted by the Petitioner for this and previous PA requests supports his ability to perform age-appropriate self-care activities with his current equipment. This decision does not preclude the Petitioner from requesting equipment in the future as his needs and condition changes.

CONCLUSIONS OF LAW

The agency properly denied the Petitioner's PA request.

THEREFORE, it is **ORDERED**

The Petitioner's appeal 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, 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 Milwaukee,
Wisconsin, this 26th day of June, 2014

\sDebra Bursinger
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 June 26, 2014.

Division of Health Care Access and Accountability