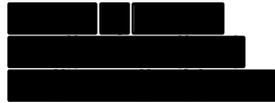




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FCP/160718

PRELIMINARY RECITALS

Pursuant to a petition filed September 19, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Continuum in regard to Medical Assistance, a hearing was held on October 21, 2014, at Eau Claire, Wisconsin.

The issue for determination is whether Continuum must provide the petitioner with a new power wheelchair.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: T.J. Adkins

Continuum
28526 US Hwy 14
Lone Rock, WI 53556

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # [redacted]) is a resident of Eau Claire County.
2. The petitioner receives Family Care Medical Assistance through Continuum.
3. The petitioner requires a motorized wheelchair to move about.

4. The petitioner has had his current wheelchair since 2006.
5. The petitioner's wheelchair requires a new joystick and battery.
6. The motor of the petitioner's wheelchair has burnt out two or three times.
7. Each time the petitioner's chair requires a repair, he does not have it for one to three weeks.
8. The petitioner's chair is taped together, has sharp protrusions, and has pieces falling off from it.

DISCUSSION

The petitioner receives Family Care Medical Assistance benefits through his care maintenance organization, Continuus. Continuus must reasonably and effectively address his long-term care outcomes in a way that is "cost-effective compared to alternative services or supports that could meet the same needs and achieve similar outcomes." Wis. Admin. Code § DHS 10.44(2)(f). He requires a power wheelchair to move about, which Continuus concedes. He contends that his current chair, which he has had since 2006, has worn out and must be replaced. Continuus denied his request for a new chair because it contends that it is more cost-effective to repair his current one.

Continuus's contract with the Department requires it to provide power wheelchairs when they are necessary. *Contract between Wisconsin Department of Health Services and Continuus*. Addendum X, § B. Perhaps it is cheaper for Continuus to keep repairing the petitioner's current chair, but the question of saving money only becomes relevant after Continuus establishes that repairing the chair, which is an alternative to buying a new one, meets his needs and achieves a similar outcome. The Department's guidelines indicate that a power wheelchair is expected to last six years, or two years less than the petitioner has had his. *The Forward Health Durable Medical Equipment Index*. P.26. After this, a chair will probably break down more and more frequently. Even if it can be repaired, while it is being repaired it cannot meet the recipient's needs. Like a broken-down car one depends upon to get to work, at some point it no longer provides reliable transportation. Continuus's representatives acknowledged that the petitioner could not use his power wheelchair while it was in the shop, but they were unconcerned, indicating that although there was "no question" he needed the chair to get around, Continuus intended to continue repairing it until parts were no longer available.

I had a chance to see the petitioner's wheelchair at the hearing. The joystick was falling out, bars were sticking out, and parts were taped together. Anyone near it risked getting sliced by its sharp protrusions. In addition, the motor has burnt out two or three times, the joystick needs replacing, and the wheels have broken. Nothing about it instilled any confidence that the petitioner could depend upon it for more than a few days at a time. And each time it needs a repair, he must go without it for one to three weeks. This chair no longer meets his needs, and no amount of repair is going to change that. He is entitled to a new one.

CONCLUSIONS OF LAW

The requested power wheelchair is medically necessary.

THEREFORE, it is

ORDERED

That this matter is remanded to Continuus with instructions that within 10 days of the date of this decision it take all steps necessary to provide the petitioner with a new motorized wheelchair.

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 4th day of December, 2014

\sMichael D. O'Brien
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 December 4, 2014.

Continuus
Office of Family Care Expansion