



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION

MPA/164033

PRELIMINARY RECITALS

Pursuant to a petition filed February 18, 2015, 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 April 14, 2015, at Sparta, Wisconsin.

The issue for determination is whether the Department erred in its modification of PA # ██████████ for a power wheelchair.

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: Mary Chucka, OTR (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. Petitioner's provider, Mayo Clinic, filed a PA request in August 2013 for a wheelchair for petitioner. See ex. #6. The chair was a power W/C with power tilt for \$15,972. The PA request was approved.
3. The petitioner refused the chair when it was delivered and stopped dealing with mayo.
4. On 1/22/15, the new provider, Numotion, filed a PA request for a power W/C for petitioner. The PA request totaled \$40,284.80 and includes functions and accessories not on the previously approved chair.
5. The Department approved the request in part but denied the power seat elevator, power legrests, and multifunction control. Petitioner appealed.

DISCUSSION

Wheelchairs and their components are items of durable medical equipment that can be paid for by MA if prior authorization is obtained. Wis. Admin. Code § DHS 107.24(2)(c)8. In determining whether to grant prior authorization, the Division must apply the generic prior authorization criteria found at Wis. Admin. Code § DHS 107.02(3)(e). The Division relied on several of the generic prior authorization code criteria in rejecting the instant prior authorization request:

(3) Prior Authorization

(e) Departmental Review Criteria. In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
- ...
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
- ...

"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 DHCAA which must adjudicate the request and determine whether the item or service for which payment is sought meets the legal definition of “medically necessary.” I note from the outset that it is the burden of the petitioner or the provider to establish the necessity in the PA request or at hearing on an appeal such as this. At hearing, petitioner’s provider did not testify. Petitioner’s mother provided the only testimony.

The Department modified this request because the documentation did not support the medical necessity for three of the requested accessories: (1) a power seat elevator; (2) Power elevating legrests; and, (3) multifunction interface. At the time of hearing, petitioner made no argument relating to the multifunction interface. Petitioner’s mother apparently had no idea what this item was or why it was necessary. As for this item, therefore, petitioner failed to persuade me that it was necessary.

As for the other two items, petitioner made various arguments that centered around the fact that petitioner’s mother is also in a wheelchair and not able to transfer and reposition petitioner herself. The power legrests would be helpful for repositioning petitioner. Petitioner’s mother also testified that the power elevator also is very convenient as it allows petitioner to raise up so he can wash dishes or cook or transfer himself to a doctor’s examining table. Petitioner’s mother also testified as to her confusion why these items were approved previously and not approved this time. I note that there was a chair approved in a PA request from Mayo Clinic dated 8/22/13. This chair was ultimately refused by petitioner when delivered. The chair that was approved previously was a \$16,000 chair which included only a power seat tilt and 5 additional line items. The chair that was requested in this instant PA request comes in at over \$40,000 and includes 11 accessory line items. The power legrests and power seat elevator were not part of the previous request despite petitioner’s mistaken contention that they were (see consultant letter of April 17, 2015, ex. #6). It may be that the loaner chair they used for a time had these features, but the record does not indicate that the Department previously approved items it is now denying. That argument from petitioner lacks merit.

But, the burden is on petitioner and the provider. The provider did not testify. The written record itself does not offer the provider’s rationale for its opinion that the denied accessories are needed. The provider must explain why this item is necessary and appropriate to the Department. It has not done so. It is also notable that the previous provider did not include the denied items in its PA because, presumably, it did not find them medically necessary. The significant difference in cost and elaborateness causes me to question the reason. Persuasive evidence would have been needed to compel me to find that the most recent request is the correct one (rather than just a provider who would like to sell the most profitable W/C it can). I am sure the denied items would be convenient and helpful for petitioner as well as his mother, but medical necessity and cost-effectiveness were not shown.

CONCLUSIONS OF LAW

The Department did not err in modifying the PA request # [REDACTED].

THEREFORE, it is

ORDERED

That this appeal 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 27th day of April, 2015

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

The preceding decision was sent to the following parties on April 27, 2015.

Division of Health Care Access and Accountability