



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
Redact
[Redacted]

DECISION

MPA/165299

PRELIMINARY RECITALS

Pursuant to a petition filed April 7, 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 May 15, 2015, at Eau Claire, Wisconsin.

The issue for determination is whether the petitioner is entitled to a wheelchair cushion.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
Redact
[Redacted]

Respondent:

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

By: [Redacted]

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

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. On February 25, 2015, the petitioner requested a custom wheelchair seat cushion at a cost of \$543.17. The Office of Inspector General denied the request on March 11, 2015.
3. The petitioner is 5' 6 1/2" and weighs approximately 400 pounds.

4. The petitioner can obtain a “skin protection wheelchair seat cushion—length 22: or greater, any depth” without prior authorization and for less cost than the requested cushion. There is no evidence that this cushion cannot meet her needs.
5. The petitioner can walk short distances and change her position in her wheelchair.

DISCUSSION

The petitioner seeks a custom seat cushion at a cost of \$543.17 for her power wheelchair. Medical assistance covers most seat cushions without prior authorization but not this one because it is more expensive than other similar cushions. It is considered durable medical equipment. *See* Wis. Admin. Code § DHS 107.24. The office denied the request because it contends that the petitioner and her provider have failed to show that a less expensive chair cannot meet her needs.

When determining whether a service is necessary, the office must review, 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. Wis. Admin. Code, § DHS 107.02(3)(e)1.,2.,3.,6. and 7. "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. HFS 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. Admin. Code, § DHS 101.03(96m).

The petitioner seeks the custom cushion to prevent ulcers. She weighs approximately 400 pounds. She provided a number of statistics concerning the cost of treating an ulcer. Although she did not provide a source for any of her statistics, I will assume they are correct. But her file contains little evidence of the likelihood that she will get an ulcer. Despite her weight, she can walk short distances and shift her position. She contends that she sits sideways in her chair, which causes pressure, but this directly contradicts her provider’s statement in the request indicating, “sitting normal.” I am not accusing the petitioner of fabricating this evidence, but when judging whether the Office of Inspector General acted correctly I base my decision on whether it properly assessed the information it had available.

Even if one assumes she is at great risk to get an ulcer, there is no significant evidence that she requires a custom cushion to prevent it. Medical assistance will pay for a “skin protection wheelchair seat cushion—length 22: or greater, any depth” without prior authorization and for less cost than the requested cushion. I

assume that a “skin protection” cushion has properties that prevent skin breakdown. Her prior authorization contains no information about why this cushion will not meet her needs. The requested cushion undoubtedly is more desirable, but medical assistance is meant to provide only basic and necessary health care, which means that requests may be denied even if they are for desirable items that clearly improve the recipient’s life. It is up to the petitioner and her provider to prove by the preponderance of the credible evidence that the requested cushion meets the medical assistance guidelines, including that it is cost-effective and that a less expensive item cannot be substituted for it. They have not met this burden. Therefore, I must uphold the agency’s denial.

CONCLUSIONS OF LAW

The Office of Inspector General correctly denied the petitioner’s request for a custom seat cushion because she has not shown by the preponderance of the credible evidence that a less expensive cushion will not meet her medical needs.

THEREFORE, it is

ORDERED

The petitioner's 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 1st day of June, 2015

\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 June 1, 2015.

Division of Health Care Access and Accountability