



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

DECISION

MPA/166490

PRELIMINARY RECITALS

Pursuant to a petition filed June 5, 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 regards to the denial of prior authorization for coverage by Medical Assistance of medical equipment, a telephone hearing was held on June 30, 2015, at Milwaukee, Wisconsin. At the request of the petitioner, the record was held open for 30 days for the submission of additional information. At the 30 day mark, the petitioner requested another 15 days to submit additional information. This request was granted too.

No issue remains for determination; the appeal is moot because the petitioner’s provider has been reimbursed by third party payors for the cost of a Rifton Gait Trainer.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
[Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

Respondent:

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

Written Appearance 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:
Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is now a 41 month-old resident of Milwaukee County. He lives at home with his parents.

2. The petitioner has spastic quadriplegic cerebral palsy, and takes oral baclofen to help with muscle tone management (he has decreased strength, hypertonia and impaired balance). He has a history of prematurity, with developmental delays and esotropia. He is medically stable and making modest functional progress. He has poor strength and coordination and currently is wheelchair dependent for mobility. His therapists have been working on ambulation skills, and he currently is able to walk 3-5 steps forward (with minimum – moderate assist) when provided hand held assist; and 2-3 steps on a treadmill using a light gait harness for support.
3. On April 10, 2015, the petitioner's durable medical equipment provider, [REDACTED], filed a Prior Authorization Request with the Division of Health Care Access and Accountability, seeking Medicaid reimbursement for the cost of a Rifton Gait Trainer with arm prompt set, chest prompt, and hip positioner kit attachments, at a total cost of \$3,056.25.
4. The petitioner also submitted a request for coverage of the same item of equipment to one of his two private third party insurers, identified as "UMR".
5. On June 3, 2015, the Division of Health Care Access and Accountability issued a letter to the petitioner and his parent denying the PA Request for coverage of the Rifton Gait Trainer.
6. On June 5, 2015, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the DHCAA denial of reimbursement of June 3, 2015.
7. On June 22, 2015, UMR approved and paid \$665.90 of the \$3,056.25 claim the petitioner made for the Rifton Gait Trainer. See, Exhibit #4, at p. 6 of 17.
8. The petitioner did not make a claim to the second private health insurance company, UHC, pending completion of the UMR claims process.
9. At the hearing held on June 30, 2015, the petitioner's mother requested that the record be held open for 15 days to obtain a record from third party insurer UHC showing that the claim had been made to it as well for coverage. Shortly thereafter, the petitioner's mother called the administrative law judge and reported that she was filing a follow-up claim with UMR for review and reconsideration of the claim it paid; and then a second claim with UHC; and she requested that the record be held open for 30 days to pursue these claims. This request was granted. She then requested 15 more days; which were also granted.
10. On or about July 7, 2015, the petitioner submitted documentation demonstrating that UMR also paid an additional sum of \$1,711.50 of the \$3,056.25 claim the petitioner made, in addition to the \$665.90 it paid on June 22, 2015. This left a balance due of \$427.88 of the original claim. See, Exhibit #5.
11. The maximum payable for the requested Rifton Gait Trainer per MA policy and rules is \$1,555. See, Exhibit #3, at p.3.
12. Subsequent to July 7, 2015, the petitioner's mother then submitted the remaining claim balance amount to a second private third party payor insurance company, United HealthCare. On July 20, 2015, United HealthCare received the claim; and on August 2, 2015, it approved payment and processed payment of the remainder due of \$427.88 for the Rifton Gait Trainer. See, Exhibit #6.
13. Despite request from the undersigned Administrative Law Judge that the petitioner submit a statement of withdrawal of the instant appeal since he had both been paid in full by his two private third party payors AND had received total payments double the maximum MA payment under MA rules and policy for this item of durable medical equipment, no further response was received from the petitioner or his representatives, necessitating this full decision issue to close the file.

DISCUSSION

For a piece of medical equipment, or a component of the equipment, to be covered by MA, it must be medically necessary. Wis. Adm. Code, §HFS 107.02(3)(e)1. Equipment is not medically necessary if it is solely for the convenience of the recipient, or if there are less costly alternatives available. Adm. Code, §HFS 101.03(96m)(b)7 and 8. In addition, Wis. Adm. Code, §HFS 107.24(2)(c)6 requires physical therapy equipment be used to “assist a disabled person to achieve independence in performing daily activities.” “Activities of daily living” are defined as “activities relating to the performance of self-care, work and leisure or play activities, including dressing, feeding or eating, grooming, mobility and object manipulation.” Wis. Adm. Code, §DHS 101.03(3). Walking is considered to be an activity of daily living under that definition.

The instant appeal is utterly and completely moot as a matter of fact and of law. The child’s durable medical equipment provider has been fully reimbursed at the requested full market rate (as distinct from the allowable MA rate) for the Rifton Gait Trainer at a total of \$3,056.25 by two third party payors, the child’s insurance companies, UMR and United HealthCare. In addition, the Department’s Therapies Consultant has reported that the maximum amount reimbursable by MA for a Rifton Gait Trainer, as here, is \$1,555. See, Exhibit #3, at p. 3. That sum was exceeded by the first private insurer, UMR, in early July, 2015. The matter became moot from a MA reimbursement perspective at that point in time in either event. The petitioner’s representative seemed not to grasp that fact. And subsequently, did not reply to a request for a written withdrawal either. Further, a second insurer then paid the balance due on August 2, 2015. As the saying goes, however, “All’s well that ends well.” The boy has his needed device and the third party payors have reimbursed for all of it. If the petitioner’s mother believes that she is due any reimbursement from the provider for \$797.24 out of pocket initially, then that is a matter between the family and the provider. Neither Medicaid, nor the Division of Hearings & Appeals, has any role in that refund dispute.

The appeal is moot as the reimbursement allowed by MA law has been made twice over by private providers. The appeal is moot as a matter of fact and law.

CONCLUSIONS OF LAW

That the petition for review herein is moot as matter of fact and law because third party payors have reimbursed the petitioner fully for the cost of the requested device, the Rifton Gait Trainer.

NOW, THEREFORE, it is ORDERED

That 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 10th day of August, 2015

\sKenneth D. Duren, Assistant Administrator
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 August 10, 2015.

Division of Health Care Access and Accountability