



FH

[REDACTED]

STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of

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

DECISION

[REDACTED]

**PRELIMINARY RECITALS**

Pursuant to a petition filed September 04, 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 September 25, 2015, at Chippewa Falls, Wisconsin.

The issue for determination is whether the petitioner is entitled to medical assistance reimbursement for

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[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 Chippewa County.
2. The petitioner is a 12-year-old boy diagnosed with cerebral palsy.

3. On June 23, 2015, the petitioner with Numotion requested a Quickie power wheelchair OM-710 with accessories at a cost of \$21,043.20. On August 4, 2015, the Office of Inspector General approved the chair but denied the following accessories: Power seat elevator (\$4,120), backpack (\$88), and RAM cup holder (\$80). The petitioner challenges only the denial of the power seat elevator.
4. The Office of Inspector General has determined that the Wisconsin Medicaid program will not cover seat elevators because they are not medically necessary.

### DISCUSSION

The petitioner requested a Quickie power wheelchair OM-710 with accessories at a cost of \$21,043.20. The Office of Inspector General approved the chair but denied a power seat elevator that cost \$4,120. (It also denied a backpack and cup holder, but the petitioner does not challenge the denial of those items. Wheelchairs and the accessories for them are types of durable medical equipment that the Office of Inspector General must authorize before Medicaid will pay for them. *See* Wis. Admin. Code § DHS 107.24.

The Office of Inspector General contends that it cannot approve a seat elevator because it is not medically necessary. The Division of Hearings and Appeals recently disagreed with this assessment in *Decision No. [REDACTED]* where it pointed out that the purpose of any durable medical equipment is to replace the functional ability that the person's disability has taken away. A person receives a power wheelchair because he cannot move about without one. With the chair comes some degree of independence. If a person's disability prevents him from not only moving about like his peers but also from adjusting to the various heights of tables and sinks like his peers, the same logic that justifies the wheelchair also justifies a seat elevator that will allow him to function at a level closer to his peers.

But this decision is legally wrong. Under Wis. Admin. Code, § DHS 107.24(2)(b), Medicaid does not cover durable medical equipment unless it is "contained in the Wisconsin durable medical equipment (DME) and medical supplies indices." The DME not only omits a seat elevator, but the department lists "seat lift chairs" in its Revised List of Noncovered Durable Medical Equipment and Services. *Medicaid and BadgerCare Update*, No. 2004-75 (September 2004). I have no authority to ignore these rules. Therefore, I must uphold the agency's decision.

### CONCLUSIONS OF LAW

The requested power seat elevator is not medically necessary because it is listed in the DME and is listed in the department's Revised List of Noncovered Durable Medical Equipment and Services

**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 28th day of October, 2015

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\sMichael D. O'Brien  
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 October 28, 2015.

Division of Health Care Access and Accountability