



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted case name]

DECISION

MPA/169002

PRELIMINARY RECITALS

Pursuant to a petition filed September 25, 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 October 29, 2015, at Oshkosh, Wisconsin. The record was held open post-hearing for additional evidence from the Petitioner's provider. Additional evidence was submitted on October 29, 2015 post-hearing and the record was closed.

The issue for determination is whether the agency properly denied the Petitioner's request for a power wheelchair.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted petitioner name]

Petitioner's Representative:

[Redacted representative name]

Respondent:

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

By: Mary Chucka

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

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Winnebago County. She resides in a skilled nursing facility.
2. Petitioner's primary diagnoses is cerebral palsy. Petitioner has been nonambulatory since 2009. Petitioner currently has a wheelchair purchased in 2010.
3. On June 12, 2015, a PA request was submitted by [REDACTED] on behalf of the Petitioner requesting a power wheelchair with accessories and components totaling \$50,854.75.
4. On August 19, 2015, the agency denied the PA request.
5. On September 25, 2015, an appeal was filed on behalf of the Petitioner.

**DISCUSSION**

Wheelchairs are items of durable medical equipment (DME). Medically necessary home health care DME is covered by the MA program, with many of the DME items requiring prior authorization as a condition of payment:

In determining whether to grant prior authorization, the agency must apply the review criteria found at Wis. Admin. Code §§ DHS 101.03(96)(m) and DHS 107.02(3)(e):

## DHS 101.03

(96)(m) "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 illness, injury or disability;

...

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;

9. Is the most appropriate supply or level of services that can safely and effectively meet the recipient's needs.

## DHS 107.02

(3)(e) In determining whether to approve or disapprove a request for prior authorization, the Department shall consider the following criteria:

1. The medical necessity of the service;

2. The appropriateness of the services;

3. The cost of the service; . . .

5. The extent to which less expensive alternatives are available; . . .

7. The effective and appropriate use of available services; . . .

If PA is requested, it is the provider's responsibility to justify the need for the equipment. Wis. Admin. Code §DHS 107.02(3)(d)6.

The agency denied the PA request for several reasons. The agency asserts that there was insufficient information to confirm that the particular wheelchair and accessories requested are medically necessary

for the Petitioner. Specifically, the agency argues that the Petitioner and provider did not demonstrate that there are no less expensive alternatives available to meet the Petitioner's mobility needs. The agency asserts there is no documentation that all of the requested components and accessories are medically necessary for the Petitioner's needs. In addition, the agency asserts that there was no documentation presented to demonstrate that it is more cost-effective to purchase a new wheelchair rather than repair the current chair.

At the hearing, the Petitioner's provider testified that the cost to repair the current chair would be \$4,237. He stated that there have been repairs to the chair of \$13,000 already. He noted that the chair has never fit her well and that she needs a new chair that fits her properly instead of trying to repair the current one. The provider testified that the Petitioner requires power tilt and power recline for pressure relief and to reposition herself. He stated that the Petitioner wants to remain as independent as possible and does not want to rely on others to reposition her. He noted that she is in the community a lot and needs to be able to reposition herself.

The provider indicated that there are 4 main manufacturers of wheelchairs that could meet the Petitioner's mobility needs. He testified that one of the manufacturers is currently under a consent decree with the FDA, another is an inferior company and a third is the company that manufactured the Petitioner's current chair. The Petitioner does not like or trust the manufacturer of her current chair. Therefore, the provider testified that the requested chair by the fourth manufacturer is the only alternative for the Petitioner.

Based on the evidence provided, I must concur with the agency that the Petitioner and provider have not submitted sufficient information to demonstrate that the particular wheelchair requested for the Petitioner meets the criteria as a "medically necessary" item. In particular, it is the Petitioner's burden to demonstrate that each component of the wheelchair is necessary to meet her needs. While the provider submitted some information at the hearing regarding the need for power recline and power tilt, there is insufficient evidence with regard to all of the components. The provider noted at the hearing that the components are replacements of the current wheelchair. Post-hearing, the provider supplied a list of the components on the Petitioner's current wheelchair. However, there is still insufficient evidence to allow me to conclude that the Petitioner needs all of the components.

With regard to the cost-effectiveness of the requested chair, again it is the Petitioner's burden to submit evidence that the requested wheelchair is the most cost-effective option. The provider's testimony that repairing the current chair is not cost-effective given the extent of repairs over the years is not supported by any documentation. If, as the provider testified, there has been over \$13,000 in repairs and the current repair will be \$4,237, it may be most feasible to consider replacement of a 5 year old wheelchair. However, the provider needs to submit additional documentation of the previous repairs as well as additional evidence to support its argument that a \$4,237 repair is more cost-effective than a \$50,000 replacement chair. Also, the provider's argument that other wheelchair manufacturers are not proper alternatives is again insufficient without additional evidence.

Based on the evidence, I conclude the agency properly denied the Petitioner's PA request. Nothing in this decision prohibits the Petitioner and provider from submitting another PA request with additional documentation to support the request.

### **CONCLUSIONS OF LAW**

The agency properly denied the Petitioner's PA request.

**THEREFORE, it is** **ORDERED**

That 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

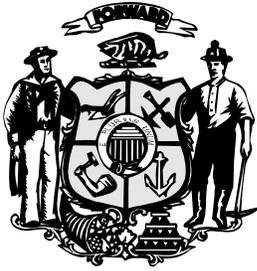
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those 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 Milwaukee,  
Wisconsin, this 15th day of December, 2015

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\sDebra Bursinger  
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 December 15, 2015.

Division of Health Care Access and Accountability