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**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]

DECISION

FCP- 171803

PRELIMINARY RECITALS

Pursuant to a petition filed February 02, 2016, under Wis. Admin. Code § DHS 10.55, to review a decision by the Care Wisconsin First, Inc. in regard to Medical Assistance (MA), a hearing was held on May 17, 2016, at Green Bay, Wisconsin. Three previously scheduled hearings were rescheduled at petitioner’s request. After the hearing, the record was held open to allow the parties to present written summations, which were timely received. Following the close of the record, the respondent submitted a physical therapy consultant’s report. The petitioner objected to inclusion of this report in the record, as it was submitted approximately two weeks following the hearing. This report will not be included in the record or considered for purposes of this decision, as the document was not provided to petitioner prior to hearing, was not addressed at hearing, the author of the report was not present at hearing, and petitioner was deprived of the opportunity to address the report or question its preparer at hearing.

The issue for determination is whether the respondent correctly denied petitioner’s request for a sit-to-stand wheelchair.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent's Representative:

[REDACTED]

Respondent:

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

By: [REDACTED]

Care Wisconsin First, Inc
PO Box 14017
Madison, WI 53708-0017

ADMINISTRATIVE LAW JUDGE:
Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #) is a resident of Brown County.
2. Petitioner's diagnoses include spastic quadriplegic cerebral palsy and arthralgia of the right hip. He has pressure ulcer over his tailbone.
3. Petitioner is dependent on caregivers for all cares, including repositioning. He is able to operate his present power wheelchair, though his mother does assist him maneuvering around the home. He has a stander available to him at school and at home, but is dependent on caregivers to transfer him from into the stander.
4. Petitioner has very good cognition, and is able to communicate via an eye gaze communicator. He testified at hearing.
5. Petitioner currently has a power wheelchair with tilt feature. Respondent concedes that the present wheelchair is in need of replacement, or at the very least substantial repair/adjustment.
6. On October 15, 2015, the petitioner submitted a request for a standing wheelchair. The request was denied on November 12, 2015; the respondent cited a lack of sufficient information to make a determination. On December 11, 2015, the respondent again denied the request, finding it not medically necessary or cost effective.
7. Petitioner filed a grievance contesting the denials, and a hearing was held January 19, 2016. On that same date, the respondent's Grievance and Appeal Committee affirmed the denial, stating that the requested sit-to-stand wheelchair was duplicative of petitioner's present services.
8. On February 2, 2016, the petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

The Family Care program, which is supervised by the Department of Health and Family Services, is designed to provide appropriate long-term care services for elderly or disabled adults. Whenever the local Family Care program decides that a person is ineligible for the program, or when the agency denies a requested service, the client is allowed to file a local grievance. The petitioner did file a grievance which was reviewed at the departmental level per Wis. Admin. Code § DHS 10.54, and the original service denial was upheld in that review. The petitioner then appropriately sought a fair hearing for a further de novo review of the denial decision.

I conclude that the Family Care agency incorrectly denied the request for the standing power wheelchair. The state code language on the scope of permissible services for Family Care reads as follows:

DHS 10.41 Family care services. ...

(2) SERVICES. Services provided under the family care benefit shall be determined through individual assessment of enrollee needs and values and detailed in an individual service plan unique to each enrollee. As appropriate to its target population and as specified in the department's contract, each CMO shall have available at least the services and support items covered under the home and community-based waivers under

42 USC 1396n(c) and ss.46.275, 46.277 and 46.278, Stat., the long-term support services and support items under the state's plan for medical assistance. In addition, a CMO may provide other services that substitute for or augment the specified services if these services are cost-effective and meet the needs of enrollees as identified through the individual assessment and service plan.

Note: The services that typically will be required to be available include adaptive aids; ...home modification; ... personal care services; ...durable medical equipment...and community support program services.

Wis. Admin. Code §DHS 10.41(2).

As a power wheelchair is an item of durable medical equipment which is covered under the state's plan for medical assistance, there is no dispute that a power wheelchair can be provided under Family Care if it is medically necessary, appropriate and cost-effective. *Id.*, 107.24(2)(c)8. In this case, the petitioner has a power wheelchair. The current chair has a tilt feature. The petitioner is requesting a power wheelchair with a standing feature.

In this case, the agency initially determined that it lacked sufficient information to determine whether the requested wheelchair was medically necessary. A month later it determined that the requested wheelchair was not medically necessary because it was unnecessary and not cost effective. Following a grievance hearing, the respondent found the request to be duplicative of petitioner's available services. At hearing in the instant manner, the respondent argued that the requested wheelchair was duplicative and not cost effective. Each of the various grounds for denial cited by the respondent are proper reasons for denying a requested item of durable medical equipment. The respondent argued at hearing that petitioner's needs could adequately be met via a new power wheelchair or adaptation of his existing chair along with two standers, additional hours for caregivers to transfer petitioner to and from his standers, and additional medications to address his pain and bowel motility.

The petitioner established that he needs a sit-to-stand wheelchair, and that the proposals presented by the respondent were not workable and/or they failed to fully address his current needs. Petitioner testified that his chair is simply too small for him, and this testimony was corroborated by letters of support from his school physical therapist and a representative from National Seating and Mobility, both of whom evaluated his present needs vis-à-vis his current chair. His physical therapist noted his seat belt and seat depth were inadequate due to petitioner's growth, and the National Seating and Mobility representative indicated that petitioner was 50 inches tall when he received his present chair, and he is now almost a foot taller; the present chair is designed for pediatric patients or small adults, and it cannot be modified to add any additional powered-seating functions. The representative estimated that a new power wheelchair without sit-to-stand capabilities will cost \$34,000, while the chair with sit-to-stand capabilities would cost approximately \$12,000 more.

The petitioner also testified regarding his ongoing pressure sore on his tailbone and the pain in his hip. He stated that standing helps to relieve his pain. The representative from National Seating and Mobility opined that petitioner would not be able to address this pain without multiple powered seating functions, and his present wheelchair cannot address this. [REDACTED], who has treated petitioner for 17 years, prescribed the sit-to-stand wheelchair for petitioner to allow him to independently address his repositioning needs to alleviate pain. She noted that he possesses the cognitive and physical ability to appropriately use a sit-to-stand wheelchair. Two other providers, [REDACTED] and [REDACTED] provided written support for petitioner's request citing the need for petitioner to stand 20

minutes of each hour to address pain, bone health, hamstring length, head control, communication and bladder function.

The petitioner is a very socially involved and active young man, and he, along with his witnesses, testified credibly that the requested sit-to-stand wheelchair is medically necessary to allow him to meet his long-term outcomes. He works with the [REDACTED], the [REDACTED], volunteers with the [REDACTED], and attends many activities outside of his home. Petitioner's mother testified as to the impossibility of transporting a stander along with his wheelchair in her vehicle, and shared her concerns regarding the constraints on petitioner's long-term goals that would be imposed in the absence of a sit-to-stand wheelchair.

The petitioner argues that, despite the \$12,000 cost difference between a new power wheelchair and a new power sit-to-stand wheelchair, his request is still cost effective since paying additional workers would exceed this cost difference year-over-year. The respondent did not address the cost effectiveness argument as specifically as petitioner, but noted that it has made numerous suggestions to address petitioner's needs that petitioner has not yet trialed. However, based upon the testimony of petitioner and petitioner's witnesses, which was corroborated by written opinions of his treating physicians, his physical therapist, and a representative from National Seating and Mobility, petitioner has established that his present needs will not be addressed with his current wheelchair, nor would such modifications be cost effective.

CONCLUSIONS OF LAW

The petitioner's request for new sit-to-stand power wheelchair, due to his need for a larger chair which will allow him to reposition himself to alleviate pain from his subluxed hip and a current pressure sore, is medically necessary.

NOW, THEREFORE, it is ORDERED

That the respondent shall rescind its denial and approve petitioner's request for a sit-to-stand wheelchair within 10 days of the date of this decision.

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, **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 14th day of July, 2016

\s _____
Peter McCombs
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 July 14, 2016.

Care Wisconsin First, Inc
Office of Family Care Expansion
Health Care Access and Accountability
[REDACTED]