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

In the Matter of

██████████
██████████
██████████
██████████

DECISION
Case #: MPA - 206828

PRELIMINARY RECITALS

Pursuant to a petition filed on November 8, 2022, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Medicaid Services regarding Medical Assistance (MA), a hearing was held on December 21, 2022, by telephone.

The issue for determination is whether Petitioner is entitled to Medical Assistance coverage of a safety / enclosed bed and accessories as specified in a prior authorization requested dated September 23, 2019 (PA # ██████████).

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

████████████████████
████████████████████
████████████████████
████████████████████

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703
Did Not Appear / No Written Submission
Division of Medicaid Services
PO Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Teresa A. Perez
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a four-year old resident of Rock County who resides with his parents. He receives Medicaid services by virtue of his eligibility for the Children and Long Term Support waiver program.
2. Petitioner has a primary medical diagnosis of [REDACTED], which is a genetic mutation. Due to this mutation, Petitioner is globally delayed. These delays include severe developmental and severe cognitive delays as well as growth failure.
3. Petitioner has low muscle tone, is unstable, and is prone to falling; has impaired mobility; has dysphagia and can choke easily; and is prone to seizures.
4. Petitioner is unaware of his surroundings and unable to understand safety, cause and effect, risk, or consequences--deficits that will not improve with time.
5. Petitioner presently sleeps in a crib but is outgrowing it and has begun to pull himself up and to put a leg over the side of the crib despite the crib being at its lowest setting. Petitioner can get his legs, arms, and head stuck in a crib.
6. Two of Petitioner's treating physicians have opined that Petitioner needs a safety bed to guard against the risk of him climbing out of bed and falling and that he is at immediate risk of physical harm without a safety bed.
7. On July 13, 2022, one of Petitioner's treating physicians signed a detailed order for a safety bed.
8. Petitioner's parents have tried other measures to try to ensure Petitioner's safety since he has begun to outgrow his crib including a crib net that was too weak and collapsed when pushed against. In addition, they continue to use a baby video monitor and when they observe him pulling himself up, they rush to his room but they are unable to constantly watch the monitor.
9. On an unknown date after July 13, 2022, National Seating and Mobility submitted a prior authorization (PA) request on Petitioner's behalf for Medical Assistance coverage of a safety bed.
10. On September 27, 2022, the Department of Health Services sent a letter to National Seating and Mobility stating that the PA request had been denied "due to medical necessity for this item was not substantiated under Wis. Admin. Code DHS 101.03(96m)—nor under review under HealthCheck (EPSDT)—thus denial. It appears less restrictive measures & more cost effective options are available to meet this member's needs."
11. Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

Medicaid does not typically cover durable medical equipment unless it is "contained in the Wisconsin durable medical equipment (DME) and medical supplies indices." See Wis. Admin. Code, § DHS 107.24(2)(b). Safety beds are not explicitly listed in the current *Durable Medical Equipment Index*; however, the procedure code E1399 for miscellaneous DME is included. And, purchase of such items may be covered with prior authorization. Wis. Stat. Admin. Code § DHS 107.24(3)(c).

In reviewing a prior authorization request for medical equipment, the Division must utilize the general criteria found in Wis. Admin. Code § DHS 107.02(3)(e). Those criteria include requirements that the requested equipment be a medical necessity. It is the provider's responsibility to justify the need for the equipment requested. Wis. Admin. Code § DHS 107.02(3)(d)6.

The relevant criteria for determining whether this request is necessary are found in § DHS 107.02(3)(e). This section requires the Department to consider several factors including the following:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service; . . .
6. The extent to which less expensive alternative services are available;

The definition of a “medically necessary” Medical Assistance service is defined by Wis. Admin. Code § DHS 101.03(96m) as a service 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. DHS 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.

The Department neither appeared nor submitted a written response to Petitioner’s appeal request. The only information in the hearing record, which was provided by Petitioner’s mother who appeared on his behalf at hearing, is a letter sent by the Department to the requesting provider stating that the prior authorization request had been denied. On the reverse side of that letter, the Department states that the requested enclosed bed is not medically necessary and that other less restrictive and more cost-effective treatments are available. Although the letter to the provider includes a list of questions that the Department posed to the provider during the PA review process regarding the suitability of other treatments, it is unknown what alternative treatment the Department may have determined to be sufficient to meet Petitioner’s needs and to also be both less restrictive and more cost-effective than the requested safety bed. See Finding of Fact No. 10.

Although the Department did not provide a response to Petitioner’s appeal, I reviewed its ForwardHealth database – where it posts written coverage policies, policy updates, policy interpretations, and information regarding prior authorization procedures. It appears that the Department has no specific coverage policy regarding coverage of enclosed beds. Moreover, I found no policy explicitly excluding coverage of such equipment. Thus, the question in front of me is whether Petitioner has provided sufficient evidence to establish that the enclosed bed meets the medical necessity standard set forth in the Wisconsin Administrative Code.

Petitioner's mother and two members of the Children Long Term Services waiver staff in the county where Petitioner resides appeared on his behalf at the hearing. Petitioner's mother offered copies of two letters of support from her son's physicians, progress notes from a medical appointment her son attended prior to the submission of the PA request, and a copy of the detailed order signed by a physician.

Most persuasively Petitioner's mother offered detailed testimony regarding other measures she has taken to keep her son safe, other measures that the Department apparently asked the provider about during the PA process, and why none of those measures are sufficient to meet her son's needs. For example, Petitioner's mother explained that the risk of her son crawling out of the crib and falling cannot be effectively addressed with behavioral therapy because it is not a risk created by any behavioral problem; rather, it is a risk created by her son's global delays and lack of safety awareness. She also explained that the video baby monitors she uses are not sufficient to prevent her son from falling out of the crib. While she watches the baby monitors and rushes to protect him when she sees him pulling himself up and putting his leg over the side of the crib, they reside in a bilevel home and her son's bedroom is not on the main floor. She thus cannot be there immediately. Moreover, she cannot constantly watch the video monitor. Similarly, she pointed out that an alarm would notify her that her son had fallen out of bed but would not help to prevent harm. She also described the safety risk created by Petitioner being out of bed and crawling unsupervised to explain why a mattress low to or on the floor would not be appropriate. One of Petitioner's doctors noted that any type of bed with railings would prevent an entanglement risk. Finally, I note that Petitioner's mother expressed confusion regarding the Department asking whether a wedge had been tried and it is unknown what use the Department believed a wedge might serve.

Based on the evidence in the record, I find that Petitioner has considered and attempted other less restrictive means to keep her son safe without success and that she has established that the requested safety bed is medically necessary. Although the Department advised the requesting provider in writing that the enclosed bed is not medically necessary and that alternatives exist to meet Petitioner's needs, the Department offered no more detailed argument or evidence to substantiate those assertions.

CONCLUSIONS OF LAW

The evidence in the record demonstrated that the requested enclosed bed is medically necessary and that Petitioner is thus entitled to Medical Assistance coverage for the enclosed bed.

THEREFORE, it is

ORDERED

That the matter is remanded to the Department with instructions to approve Prior Authorization Request No. [REDACTED] and to send written notice of that approval to both National Seating & Mobility and Petitioner. The Department shall do so within ten 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, 4822 Madison Yards Way, 5th Floor North, 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.

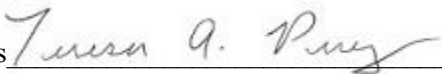
The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

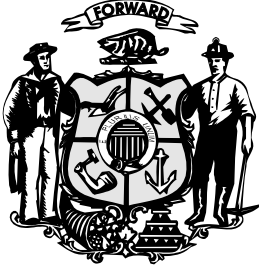
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 23rd day of January, 2023

 vs _____

Teresa A. Perez
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 January 23, 2023.

Division of Medicaid Services