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

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In the Matter of



**DECISION**  
Case #: MPA - 207590

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 2, 2023, under Wis. Stat., §49.45(5), to review a decision by the Division of Medicaid Services (DMS) to deny Medical Assistance (MA) authorization for a Cubby bed, a hearing was held on March 29, 2023, by telephone.

The issue for determination is whether the requested bed has been shown to be cost effective.

**PARTIES IN INTEREST:**

Petitioner:



Petitioner's Representative:

Atty. Gabe Dieguez  
Legal Action of Wisconsin  
744 Williamson Street  
Suite 200  
Madison, WI 53703

Respondent:

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

By: Written submission of [REDACTED], DME Consultant  
Division of Medicaid Services  
PO Box 309  
Madison, WI 53701-0309

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is resident of Dane County (DOB [REDACTED]) who is eligible for MA.

2. Petitioner has autism with two symptoms highly relevant to this appeal – she is at a high risk for elopement, and she bangs her head when frustrated. She is able to bypass child safety locks and baby gates. The family has tried putting a soft helmet to alleviate the head banging, but she is able to remove it and refuses to wear it; it was found that when the helmet was used petitioner banged her head more frequently out of frustration of having it on.
3. The family used a Pack N Play bed with some success, until petitioner began to rub feces on the mesh. Petitioner has outgrown the feces issue, but now is able to get out of the Pack N Play bed on her own.
4. On November 23, 2022, National Seating and Mobility requested authorization for a Cubby Plus Safety Bed at the high cost of \$13,490, PA no. [REDACTED]. The request was returned with a number of questions, to which petitioner’s primary doctor responded with some detail. Nevertheless, by a letter dated December 29, 2022, the DMS denied the request, finding that there are more cost-effective means to handle petitioner’s bedtime and sleeping issues.
5. Petitioner receives in-home autism treatment, but the therapists are not present at bedtime hours.
6. The Cubby bed is a full-sized twin bed that petitioner will not outgrow. It can be enclosed so that petitioner cannot exit it, and it includes a camera and sound system connected to petitioner’s mother’s cell phone that would alert petitioner’s mother if petitioner did manage to elope or otherwise attempt self-injurious behavior.

### DISCUSSION

Pursuant to Wis. Admin. Code, §DHS 107.24(2)(c)4, a specialized bed may be provided under the MA program when prescribed by a physician. However, the MA program does not cover items that are for the comfort or convenience of the recipient, or items that are not cost effective; such items are not considered medically necessary.

State regulations control the decision-making process of the DMS in reviewing prior authorization requests, and the criteria was properly referenced by the DMS in the denial letter to the petitioner. Wis. Admin. Code, §DHS 107.02(3)(e) states, in relevant part, as follows:

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; . . .
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations including Medicare or private insurance guidelines.

The primary reason that this admittedly expensive bed was denied is that it is not cost effective, in particular that the family should continue to work on modifying sleep activity and that other, cheaper alternatives have not been trialed. The problem is that petitioner’s medical team is well-versed in autism and in petitioner’s particular needs. Dr. [REDACTED]’s responses to the DMS consultant’s numerous questions were thoughtful and reasonable. While petitioner has autism, she also obviously is quite clever, and it appears that every effort to modify her sleep activity has been unsuccessful because petitioner herself has been able to circumvent the

attempts. Obviously, some behavior modification has been successful because petitioner no longer smears feces, for example, but the two primary issues, elopement and head banging, remain prevalent. It is very possible that petitioner will find a way to circumvent the Cubby bed as well, but her care team is in agreement that it is the most cost-effective response to the issues at hand. I thus will order that the requested bed be approved.

I note to petitioner that National Seating and Mobility will not receive a copy of this decision. To have the bed approved, petitioner must provide a copy of this decision to National Seating. The provider must then submit a *new* prior authorization request, along with a copy of this decision, to receive the approved coverage.

### CONCLUSIONS OF LAW

Petitioner has shown that the requested Cubby Plus Safety Bed is a cost-effective means to alleviate petitioner's bedtime elopement and head banging issues.

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

That National Seating and Mobility is hereby authorized to provide the Cubby Plus Safety Bed requested in PA no. [REDACTED]. The provider should submit a new prior authorization request along with a copy of this decision for approval.

### **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, 5<sup>th</sup> 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**

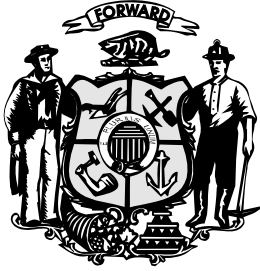
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 3rd day of April, 2023



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Brian C. Schneider  
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 April 3, 2023.

Division of Medicaid Services  
Attorney Gabe Dieguez