



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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████████████████████

DECISION
Case #: MPA - 208352

PRELIMINARY RECITALS

Pursuant to a petition filed on April 18, 2023, 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 June 9, 2023, by telephone. The hearing in this matter was held concurrently with the hearing in DHA Case no. MPA-208353, as the two prior authorizations at issue are part of a single overarching request. The “two-part” prior authorization requests are identified as PA nos. ██████████ and ██████████. As separate appeal files were opened owing to the existence of the two related prior authorization requests, separate decisions will be issued on each prior authorization.

The issue for determination is whether the respondent correctly denied petitioner’s prior authorization request (PA no. ██████████) for a power wheelchair with standing feature and accessories.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Petitioner's Representative:

Jared Kirkhart
██████████
920 N Westhill Blvd
Appleton, WI 54914

Respondent:

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

By: Kristine Staszak, PT (written appearance)
Division of Medicaid Services
PO Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of [REDACTED].
2. Petitioner qualifies for MA assistance, and has been diagnosed with cerebral palsy, limited vision, epilepsy, and hydrocephalus (with shunt).
3. Petitioner currently has a power wheelchair for use in school and a manual wheelchair for use in her home. Petitioner has completed her junior year of high school and presently resides with her mother.
4. [REDACTED] has been working with petitioner and her therapists for two years. Petitioner has trialed a standing frame at school, which requires the assistance of two caregivers to get into/out of the stander. A power wheelchair with power standing feature requires the assistance of only one caregiver.
5. Petitioner's current independence goals include operating a power wheelchair, standing independently, and preparing herself for future employment opportunities as an adult.
6. On January 18, 2023, petitioner submitted a prior authorization (PA no. [REDACTED]) request for a power wheelchair with standing feature and accessories. A second, related prior authorization request (PA no. [REDACTED]) was submitted the same date.¹
7. The respondent denied petitioner's prior authorization request on January 29, 2023, citing a lack of medical necessity, cost effectiveness and level of supply.

DISCUSSION

The petitioner is a [REDACTED] confined to a wheelchair with a diagnosis of cerebral palsy, limited vision, epilepsy, and hydrocephalus (with shunt). 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. Petitioner requested a power wheelchair with standing feature and accessories. After review, the Office of Inspector General approved the power wheelchair request, but modified the approval by denying the request for the power standing feature with components, power elevating leg rests, and an attendant control option. The respondent denied these features, noting in its written hearing documentation that the petitioner had failed to establish medical necessity, cost effectiveness and that the requests evinced an appropriate level of assistance to address her needs.

The respondent argued that the denial is consistent with general medical regulations used to determine whether any medical assistance service is necessary. Those regulations require the department to consider, among other things, the medical necessity of the service, the appropriateness of the service, the cost of the service, the extent to which less expensive alternative services are available, and whether the service is an effective and appropriate use of available services. Wis. Admin. Code, § DHS 107.02(3)(e)1.,2.,3.,6. and 7. "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 A decision specific to PA no. [REDACTED] will be issued separately, but I note that these two PA requests are considered by the parties to be a related "two-part" prior authorization request.

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. HFS 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.

Wis. Admin. Code, § DHS 101.03(96m).

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 she cannot move about without one. With the chair comes some degree of independence. If a person's disability prevents her from not only moving about like her peers but also from adjusting to the various heights of tables and reaching for items like her peers, the same logic that justifies the wheelchair also justifies a standing feature that will allow her to function at a level closer to her peers. With it she could arguably access tables and countertops of various heights, develop employment opportunities where she would otherwise be excluded, and potentially perform tasks that she could not perform from a seated position.

The respondent argued four specific points: the denied requests are duplicative, the requests were denied as they were found to be of convenience to the petitioner, the denied requests are not cost effective compared to a stander, and the denied requests are not the most appropriate level of service that can be supplied. The petitioner addressed and rebutted these arguments at hearing via credible testimony and the submission of corroborating documentation.

The respondent first argues that the power standing feature and components are duplicative to the power seat elevation request, which was approved. The petitioner concedes that, while there is certainly some overlap in terms of function, the power standing feature would address matters that the power elevation feature would not. Petitioner identified a therapy evaluation conducted April 11, 2022, indicating that the power standing feature would benefit petitioner's bowel/bladder function and references petitioner's ongoing and frequent bladder infections due to poor bladder emptying. Petitioner was also noted to receive a benefit in pain reduction with a standing program, which addressed her spasticity in her lower extremities. The [REDACTED] representative testified that power seat elevation does not provide petitioner with assistance with a standing program, and therefore cannot present the same benefits; as such it is not duplicative, despite some crossover in function.

The respondent also found that the attendant control was duplicative and a convenience, as petitioner was deemed independent in the operation of the power wheelchair and her caregivers can operate the wheelchair's joystick where required. Petitioner responded that attendant control is necessary to address petitioner's safety. The [REDACTED] representative testified that attendant control is necessary to address situations where petitioner is being loaded onto a lift (into a vehicle) or loaded into a small elevator (such as the one in her school). In these situations, petitioner's caregiver would be located behind petitioner's

wheelchair and unable to reach the joystick control mounted at the front of the wheelchair. Petitioner has successfully rebutted the respondent's contention that petitioner's caregiver could simply operate the same joystick. As such, I concur that the attendant control request is not duplicative, since situations will arise where a caregiver simply cannot access petitioner's joystick controller.

The respondent next argues that the power stand feature is for the convenience of petitioner, her family or her providers and not an appropriate level of service. The basis for this argument is that caregiver assistance would be required for her to use the standing feature to participate in a standing program, just as she would with a standing frame. While not incorrect, the petitioner established that two caregivers are required to allow petitioner to utilize a standing frame, whereas, the power stand feature would allow for assistance of only one caregiver. Petitioner also noted that, at home, petitioner only has a single caregiver.

The respondent also indicated that the denial of the requests for power elevating leg rests was based upon the same convenience and level of service concerns, and questioned why caregivers could not assist with leg elevations or why petitioner could not independently tilt her wheelchair to raise her lower extremities above her heart. Petitioner responded that the power tilt option does not allow for raising lower extremities above the heart. Additionally, petitioner notes that her edema issues have been noted by her therapists and [REDACTED] in their evaluations, and that her documented limitations in strength and range would not allow her to reach manual elevating leg rests. This would restrict her independence. The respondent itself noted that petitioner's physical therapy notes state that the power elevating leg rests provide her with a means to aid proper lower extremity circulation and reduce edema by independently being able to raise her legs. The notes further specifically state that petitioner currently experiences circulation problems in her legs. I find that petitioner has established that power elevating leg rests are not solely for the convenience of petitioner, her family, or her caregivers.

The cost-effectiveness of the requested power wheelchair with standing feature must also be established by the petitioner in order to determine whether the request is medically necessary. The prior authorization requests submitted on behalf of petitioner identified that her power wheelchair and accessories would cost \$104,207.40. At hearing, however, petitioner's provider identified the total cost that would be covered by Medicaid as \$34,165.64. Petitioner's provider indicated that the difference in cost reflects the "insurance" price versus the actual amount that MA would reimburse the provider.

As noted above, the respondent suggests a fixed standing frame would be a more cost effective option to address petitioner's needs. At hearing, petitioner established that the cost of utilizing a standing frame in conjunction with a power wheelchair would be greater than simply approving a power wheelchair with a standing feature. The respondent indicated that a standing frame would cost somewhere in a range of \$2,000.00 to \$3,000.00. Petitioner noted the benefits she receives from standing, and those are not refuted by the respondent. She further explained that using a standing frame would require her providers to supply at least two caregivers to assist her in the use of that standing frame, a cost that would not be present if the current request was approved. As petitioner resides with only her mother, the cost of this additional caregiver over a five year period, the life expectancy of a power wheelchair, would likely exceed the initial cost of the power standing feature. Petitioner's provider added that he expects the power wheelchair with standing feature to last much longer than 5 years, and predicts that the cost savings will be even greater than those based upon the five-year expected lifespan.

Based upon the record before me on rehearing, I find that petitioner has established the medical necessity of the requested power wheelchair with standing feature and accessories at a reimbursement rate of \$34,165.64.

In order to receive the approved power wheelchair with standing feature and accessories, she must provide a copy of this decision to the provider, who then must submit a new prior authorization request.

CONCLUSIONS OF LAW

The petitioner and her provider have established by the preponderance of the credible evidence that the requested power wheelchair with standing feature, as identified by PA nos. [REDACTED] and PA no. [REDACTED], is cost effective and medically necessary.

THEREFORE, it is

ORDERED

That the petitioner's provider is authorized to provide the power wheelchair with standing feature discussed in this decision. To receive reimbursement the provider must submit his claim for reimbursement of \$34,165.64, along with a copy of this decision and a new prior authorization form to Forward Health for payment.

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

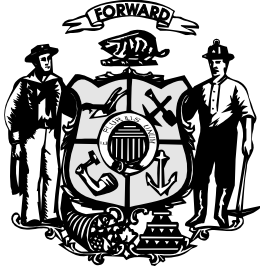
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 11th day of July, 2023

\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 11, 2023.

Division of Medicaid Services

