



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: FCP - 200625

PRELIMINARY RECITALS

Pursuant to a petition filed on December 1, 2020, under Wis. Admin. Code § DHS 10.55, to review a decision by the MY Choice Family Care regarding Medical Assistance (MA), a hearing was held on January 7, 2021, by telephone.

The issue for determination is whether the department correctly denied the petitioner's request for a motorized tilt-and-lift wheelchair.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:



Respondent:

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

By: [Redacted]
MY Choice Family Care
10201 Innovation Dr, Suite 100
Wauwatosa, WI 53226

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # [Redacted]) is a resident of Dunn County.
2. The petitioner receives medical assistance through her CMO, My Choice Wisconsin.

3. My Choice denied the petitioner's request for a motorized tilt-and-lift wheelchair on August 10, 2020, and upheld that denial on November 3, 2020. She appealed to the Division of Hearings and Appeals on December 1, 2020.
4. The petitioner is a 53-year-old woman diagnosed with severe myalgic encephalomyelitis, more commonly known as chronic fatigue syndrome.
5. The patient's mobility has significantly declined since 2011. She has been homebound since October of 2014, and has been unable to independently sit, walk or stand since August 2017. She relies completely on her family and caregivers for all positioning and activities of daily living. She relies on an overhead lift system for transfers.
6. The petitioner receives 65 hours of care per week from paid caregivers. She lives with her husband and adult daughter. Although there are generally people in the petitioner's house, she is often alone for up to three hours at a time.
7. The petitioner's physician prescribed the requested power wheelchair system "to promote overall skin integrity, functional mobility and positioning in order to maximize overall interaction with her discharge environment."
8. The petitioner generally speaks through a Dynavox because she lacks the energy to talk loud enough to be heard. She operates the system by gazing at it because she lacks the strength and stamina needed to hold a portable device. Her lack of strength and stamina prevent her from using her cellphone precisely and using any other electronics for more than a short period.
9. The requested chair costs \$31,272.75.
10. A manual wheelchair with a power tilt-in-space attachment would protect the petitioner's skin integrity and allow her to position herself, but it would not allow her the independence a motorized chair would offer. It would offer less variety of positions than the requested chair. It would cost less than \$8,000.
11. The petitioner has not had a trial of the requested chair to determine whether she can operate it.

### DISCUSSION

The petitioner is a 53-year-old woman who cannot move about or take care of any of her own needs unassisted because of extreme chronic fatigue syndrome. She receives her medical assistance benefits through My Choice Care Management Organization as part of the Family Care Program. She appeals My Choice's denial of her request for power wheelchair with an attached power tilt-in-space. My Choice contends that a manual wheelchair with an attached power tilt-in-space will meet her needs at a much lower cost.

The Family Care Program provides appropriate long-term care services for elderly or disabled adults. It is supervised by the Department of Health and Family Services, authorized by Wis. Stat. § 46.286, and comprehensively described in Chapter DHS 10 of the Wisconsin Administrative Code. Eligible applicants are referred for enrollment in a care management organization (CMO), which drafts a service plan that meets the following criteria:

(f) The CMO, in partnership with the enrollee, shall develop an individual service plan for each enrollee, with the full participation of the enrollee and any family members or other representatives that the enrollee wishes to participate...The service plan shall meet all of the following conditions:

1. Reasonably and effectively addresses all of the long-term care needs and utilizes all enrollee strengths and informal supports identified in the comprehensive assessment under par. (e)1.

2. Reasonably and effectively addresses all of the enrollee's long-term care outcomes identified in the comprehensive assessment under par. (e)2 and assists the enrollee to be as self-reliant and autonomous as possible and desired by the enrollee.
3. Is cost-effective compared to alternative services or supports that could meet the same needs and achieve similar outcomes.
4. Is agreed to by the enrollee, except as provided in subd. 5. [Subsection 5 describes interim services and provides an appeal mechanism.]

Wis. Admin. Code § DHS 10.44(2)(f).

CMOs must “comply with all applicable statutes, all of the standards in this subchapter and all requirements of its contract with the department.” Wis. Admin. Code, § 10.44(1). My Choice's contract with the department specifically requires it to provide durable medical equipment consistent with Wis. Admin. Code, § DHS 107.24. *Contract Between Department of Health Services and My Choice Managed Care Organization*, 356 – 357. That contract requires it to provide services necessary to support outcomes the outcomes identified in the member's Member-Centered Plan and include both necessary long-term care services and medically necessary services. pp. 22 – 23.

The *Contract*, p.17, defines *necessary long-term care services and supports* as

any service or support that is provided to assist a member to complete daily living activities, learn new skills, maintain a general sense of safety and well-being, or otherwise pursue a normal daily life rhythm, and that meets the following standards:

- a) Is consistent with the member's comprehensive assessment and member-centered plan;
- b) 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;
- c) Is appropriate with regard to the Department's and MCO's generally accepted standards of long-term care and support;
- d) Is not duplicative with respect to other services being provided to the member;
- e) With respect to prior authorization of a service and other prospective coverage determinations made by the MCO, is cost-effective compared to an alternative necessary long-term care service which is reasonably accessible to the member; and,
- f) Is the most appropriate supply or level of service that can safely and effectively be provided to the member.

The *Contract*, pp. 15 – 16, states that the term *medically necessary* has the meaning found in Wis. Admin. Code DHS §101.03(96m), which is as follows:

- (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. 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.

As with any medical assistance service, when determining whether it is necessary, the department must also review, among other things, 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)2.,3.,6. and 7.

The department has set general criteria under Wis. Admin. Code, § DHS 107.24, that recipients must meet before a mobility device such as manual or power wheelchair can be approved. They are:

1. The request is for an adaptive stroller, manual/power wheelchair, or power scooter.
2. The member is unable to ambulate functional distances due to a physical disability and/or a medical condition that significantly reduces their ability to participate in medically necessary mobility-related activities of daily living (MRADL) such as toileting, feeding, dressing, grooming, bathing, and vocational activities.
3. The member's medically necessary MRADL needs cannot be practically and safely met by the utilization of less restricting mobility devices such as canes, crutches, or walkers.
4. The member and/or caregiver demonstrates a competence and willingness to operate the requested mobility device.
5. The functionality and size of the requested mobility device is the most appropriate for the environment in which it will be used most frequently.

*ForwardHealth Update No. 2018-32..*

The petitioner's physician prescribed the requested power wheelchair system "to promote overall skin integrity, functional mobility and positioning in order to maximize overall interaction with her discharge environment." The petitioner testified that right now she is like an infant left in highchair. Rather than be taken care of, she wants to greet people, to be part of family dinners, and to be part of life. She wants to go on her deck and eventually into her yard. With the right equipment, she says she'll see how far she can go.

Much of My Choice's objection to the requested power wheelchair pertains to its cost. This is a valid concern. The petitioner correctly points out that the Family Care Program is designed to meet the petitioner's needs and offers more flexibility when it comes to providing a good or service than the regular medical assistance program. But both the administrative code provisions and the references to necessary long-term care services and supports and medically necessary services in My Choice's contract allow it to consider cost. The requested chair costs \$31,272.75 while a manual wheelchair with a power tilt-in-space would that a manual wheelchair would cost under \$8,000.

But the two chairs would not provide the same benefit. At the close of the hearing, I allowed both parties to submit information on the manual chair. The occupational therapist assisting the petitioner indicated that the only feature the petitioner could operate on her own would be the tilt function. Unlike with the requested chair, the manual chair will not allow her to elevate the leg rest, recline, or propel it without help. Because she could not propel the chair, she could not maneuver it in place and within her home. This means that it would offer her none of the independence and significantly less ability to change her position than the requested chair would offer.

The problem is that she has not proved that she can use the chair. Her therapist believes she could learn to use it. Maybe she could, but right now there is little evidence of this. She has not had a trial of this chair. While she cannot be expected to show proficiency the first time she uses the chair, a trial would provide evidence that she could develop proficiency. The severity of her illness has affected her ability to other tasks that suggest that she might never be able to operate the requested chair. She generally speaks through a Dynavox because she lacks the energy to talk loud enough to be heard. She operates this by gazing her eyes because she lacks the strength and stamina needed to hold a portable device. Her lack of strength and stamina prevent her from using her cellphone precisely and from using any other electronic device for more than a short period. Under these circumstances, her therapist's assertion that she will be able to use the chair because it is less tiring to do than operating a cellphone or other device that requires her to use her fingers is not sufficient evidence.

As pointed out, My Choice's contract indicates that it must provide durable medical equipment consistent with Wis. Admin. Code, § DHS 107.24. *Forward Health Update 2018-32*, which provides guidance for carrying out § DHS 107.24, includes the common-sense requirement that she demonstrate that she can use the chair competently before My Choice has to pay for it. This is consistent with the regulations and contract provisions relevant to this matter. If she cannot use the chair competently, she cannot demonstrate that it would assist her to be as self-reliant and autonomous as possible and desired. Nor would the chair provide the most appropriate level of services that can effectively be provided to her.

In conclusion, while there is no doubt that if the petitioner could use the chair effectively, it would increase her independence and meet the other needs listed in her physician's prescription. But she has not shown proved by the preponderance of the evidence that she could use the chair. The lack of evidence that she can effectively use the chair combined with its \$31,000 cost sinks her request. I cannot guarantee that if she proves she can use the chair that that would ensure that it would ultimately be approved because I will not hear her next appeal, and, more importantly, each matter is determined on all the facts available at the time of the hearing. But I would strongly suggest that she receive a thorough and well documented trial of the chair before she submits a new request.

### CONCLUSIONS OF LAW

My Choice correctly denied the petitioner's request for a power wheelchair because she has not proved by the preponderance of the evidence that it is medically necessary.

**THEREFORE, it is**

**ORDERED**

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, 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.

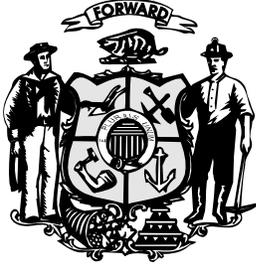
## **APPEAL TO COURT**

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 11th day of January, 2021

\s \_\_\_\_\_  
Michael D. O'Brien  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
5<sup>th</sup> Floor North  
4822 Madison Yards Way  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 11, 2021.

MY Choice Family Care  
Office of Family Care Expansion  
Health Care Access and Accountability

