

STATE OF FLORIDA  
DEPARTMENT OF CHILDREN AND FAMILIES  
OFFICE OF APPEAL HEARINGS

**FILED**

APR 11 2014

OFFICE OF APPEAL HEARINGS  
DEPT OF CHILDREN & FAMILIES



APPEAL NO. 13F-11472

PETITIONER,

vs.

AGENCY FOR HEALTH CARE ADMINISTRATION  
CIRCUIT: 06 PASCO  
UNIT: AHCA


RESPONDENT.

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**FINAL ORDER**

Pursuant to notice, a hearing in the above-styled matter convened on February 13, 2014, before Hearing Officer Patricia C. Antonucci, of the Department of Children and Families. All parties and witnesses appeared via teleconference.

**APPEARANCES**

For the Petitioner: , Petitioner's mother

For the Respondent: Patricia Cobb, RN Specialist,  
Agency for Healthcare Administration

**STATEMENT OF THE ISSUE**

At issue is whether Respondent, the Agency for Healthcare Administration (AHCA)'s denial of petitioner's request for Durable Medical Equipment (DME) was proper.

**PRELIMINARY STATEMENT**

On December 4, 2013, Petitioner's representative requested a hearing to challenge Respondent's denial of Petitioner's requested DME: A tram with charger, forearm supports, and walking saddle, as well as a shower chair.

On January 6, 2014, Respondent filed a Request to Dismiss that portion of Petitioner's appeal related to the shower chair, stating that this piece of DME was approved after Petitioner's hearing request was filed. The parties were notified that the Request to Dismiss would be addressed on the record at the date and time scheduled for hearing, prior to proceeding to the merits.

Final hearing convened on February 13, 2014, via teleconference. The Petitioner was not present for hearing, but was represented by her mother, [REDACTED] Patricia Cobb, AHCA RN Specialist, represented the Respondent. Respondent presented one additional witness: Darlene Calhoun, M.D., physician reviewer with eQHealth Solutions. Dr. Calhoun was proffered and accepted as an expert witness.

After Petitioner stated that she had no objection to dismissal of the appeal for the shower chair, the parties proceeded to hearing with regard to Respondent's denial of the remaining DME request. Respondent's Exhibits 1 through 7 were accepted into evidence. Administrative Notice was taken of F. Admin. Code R. 59G-4.070, Fla. Stat § 409.905 and § 409.906(10), and pages 1-1, 2-5, 2-7, 2-9, and 2-16 of the DME and Medical Supply Coverage and Limitations Handbook (DME Handbook).

The record was held open so that both parties could file supplemental documentation. The following supplements were received and have been accepted into evidence as indicated:

- Petitioner's Composite Exhibit 1: coversheet + letter from Victor M. Hayes, MD dated February 13, 2014 (2 pages)
- Respondent's Composite Exhibit 8: Dr. Calhoun's response to Petitioner's supplemental documentation + certificate of service (2 pages)
- Respondent's Composite Exhibit 9: summary of AHCA's policy regarding Medicaid funding of a walker, supporting pages from the DME Handbook + certificate of service (7 pages).

### **FINDINGS OF FACT**

Based upon the oral and documentary evidence presented at the final hearing, and on the entire record of this proceeding, the following Findings of Fact are made:

1. Petitioner is a 22-year old female, born [REDACTED]. She is diagnosed with Cerebral Palsy and requires assistance with activities of daily living (ADLs), including one-person transfers. Petitioner was born with certain organs outside of her body and required surgical repair shortly after birth. She has a history of tracheostomy and g-tube, though both have been removed. Additional surgeries include bilateral hamstring releases and a right hip osteotomy. The Petitioner is approximately 4 feet, 10 inches tall and weighs approximately 75 pounds. She uses a wheelchair to ambulate, has a shoe lift to offset the difference in length between her legs, and uses a BIPAP machine to treat her sleep apnea. Petitioner has significant scoliotic curvature, measured at 47-degrees in 2011 and has little physical strength. She resides in the family home with her mother and two siblings.
2. On October 10, 2013, Petitioner underwent a physical therapy (PT) equipment evaluation, administered by Welch & McLoy Therapy Services, PA. and approved by Petitioner's physician. The reason for this evaluation is noted, as follows:

[Petitioner]'s bath chair is very old with rust falling off of the frame. The bath chair is no longer rolling properly and at risk of tipping. [Petitioner] is also having difficulty with transfers as her mom is close to her in size and having difficulty performing a single person transfer to transition [her] from one area to another.

3. The evaluating PT agency considered four specific lifts to determine which would best fulfill Petitioner's need for assistance with transfers. Although the PT evaluation report references consideration of the Hoyer 400 lb Hydraulic Lift (base unit + sling estimated at \$1,049.95), the Invacare Stand Up Lift (base unit + sling estimated at \$4,029.90), the BHM Ministand (base unit at minimum cost of \$3,211.20, not including required sling), and the Rifton Tram (cost noted below), there is no indication that Petitioner was actually tested on any of these lifts in the presence of the evaluating PT.

4. The PT equipment evaluation concludes with a recommendation for the Rifton Tram, noting that the Rifton is multifunctional device, which could potentially be used for transfers, standing, and assistance with ambulation. Forearm supports used along with the Rifton would enable Petitioner to assist with supporting herself during transfers, and a walking saddle would be used to assist with transfers, standing, and gait activities. The report notes that while the Hoyer 400 lb Hydraulic Lift is the least costly option for transfer needs, after attempted use of the Hoyer, Petitioner's mother "reported [to the evaluating PT] that safe use of this lift to perform transfers for [Petitioner] required 2 people and that [Petitioner] almost fell backwards while attempting to perform lifts with only 1 person present." It is further noted that, "[t]he durable medical equipment provider would be responsible for ensuring that [Petitioner] and her family would be able to safely use the Rifton Tram to perform [her] transfers."

5. In order to obtain authorization for DME, a Medicaid recipient's DME provider must submit, to AHCA, a request for same. Following that submission, ACHA's prior authorization (PA) reviewer, eQHealth Solutions, reviews the medical necessity of the requested DME, pursuant to the requirements and limitations of the Florida Medicaid Program. Based upon that review, AHCA determines whether the recipient's request will be approved or denied.
6. On or about November 22, 2013, Petitioner requested that Respondent provide her with the Rifton Tram, charger power cord, forearm supports, and walking saddle. Submitted with this DME request was the PT equipment evaluation report, a Physician's Order for the Rifton Tram, and a price quote for the Tram, cord, supports, and saddle totaling \$4,310.00.
7. On November 25, 2013, a physician reviewer with the PA evaluated Petitioner's request under Code E1399 (Miscellaneous DME). Review of the PA's Outpatient Review History reflects the following:

Clinical Information: 22 y/o female dx CP. Requires assistance with all ADLs. Dependent for transfers. Her mother is caregiver, and is transferring recipient by herself. She has trialed a Hoyer 400 hydraulic lift, however says that the base is too large and requires extra space within the home.

Rationale: The base on the requested Rifton Tram measures larger than the Hoyer Lift that was trialed and deemed as too large. The requested lift is not the least costly alternative, and is excessive. Documentation and indication of recipient's status do not support the request. Recommend denial.
8. Via letter dated November 26, 2013, the PA notified petitioner's physician and the DME provider, Custom Mobility, of its intent to deny the DME request, stating, in part:

PR Principal Reason – Denial: The clinical information provided does not support Medicaid's medical necessity definition.

Clinical Rationale for Decision: The patient is a 22 year old female with cerebral palsy. The request is for the convenience of the recipient and not medically necessary. The requested DME is not approved.

9. On November 26, 2013, a notice was also sent to the petitioner. Petitioner's notice did not include information regarding the principal denial reason or the clinical rationale, stating only that in order to be authorized, a device or service must be:

Medically necessary as defined in 59G-1010(166), Florida Administrative Code (F.A.C.), specifically the services must be: Furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caregiver, or the provider.

10. At hearing, it was clarified that Petitioner's mother suffers from back pain and injury resulting from a herniated disk, as well as a later, aggravating automobile accident that resulted in spinal tears. As Petitioner's mother weighs approximately 98 pounds and stands 5 feet tall, she is not much bigger than her daughter. Petitioner's mother has significant difficulty transferring the Petitioner, who, following a recent hospital admission is currently unable to put pressure on her own legs in order to help with her transfers. Although she has a degree in exercise physiology and a degree in nursing, and is thus well aware of proper technique for a one-person transfer, Petitioner's lack of strength combined with her mother's small stature and physical limitations combined make for trouble transferring the Petitioner in a safe manner.

11. Petitioner's mother confirmed that she had tested no other lift devices besides the Hoyer Lift, which belonged to a friend and was trialed by Petitioner a few years prior to the request for DME. She stated that the size of the base of the lift was never a

concern, but rather, that she did not feel safe when operating the Hoyer device and almost dropped the Petitioner, mid-transfer. The petitioner seeks a piece of equipment which can assist the Petitioner in transfers while she is unable to support herself and is thus "dead weight." She believes that the sling component of the Rifton Tram will enable smooth transitions. The petitioner prefers that the DME provided be multifunctional, such that it might eventually be used for standing and ambulating, as the Petitioner's strength improves.

12. Petitioner is unable to use a gait belt, and though she has a useable stander, her Kidwalk is no longer functional. The Kidwalk was not funded by Medicaid, and that Petitioner's stander has not been used since the Petitioner became ill about one month prior to hearing.

13. It is Respondent's position that Petitioner did not submit a request for DME based upon the desire to use same as a multi-purpose lift/stander/walker, such that supporting documentation or comparison of various stander and walker devices was included within her request. As such, Respondent has considered the Rifton Tram only insofar as it relates to Petitioner's need for assistance with transfers.

14. Dr. Calhoun, as Respondent's expert witness, opined that the type/model of Hoyer Lift referenced in Petitioner's evaluation and tested in the home of a friend might not be appropriate for the Petitioner. However, Dr. Calhoun felt that the mother might be able to manage a properly-sized Hoyer lift, such that it would fulfill Petitioner's transfer needs. As Dr. Calhoun did not have sufficient documentation of Petitioner's abilities and condition related to standing and ambulating, she suggested that Petitioner

consider filing a new request for DME that outlines her needs and specifies how the requested equipment will meet same.

15. Following hearing, a physician's letter dated February 13, 2014 was filed by Petitioner. The letter references the mother's physical limitations, noting:

Our patient is recovering from their illness/surgery and needs the following restrictions: .. No bending, LIFTING or twisting with more than 15 lbs permanently due to her spine disorder and may require surgery. If you have any further questions, please contact my office...

16. On February 20, 2014, Dr. Calhoun submitted a written response, based upon review of this supplemental documentation, stating, in pertinent part:

The response is no, the submitted documentation related to the mother's medical limitations does not change the decision made at the time of the [hearing]. Specifically, the provider's request was for assistance with transfers that then became assistance with transfers and ambulation, i.e., gait trainer. While it is acknowledged that the mother has medical limitations prohibiting transfer of the recipient, the request for DME to assist with transfer in this case was not the most effective and least costly alternative, therefore, medical necessity was not met. Would continue to recommend that the provider work with the mother and submit a new DME request specifically outlining the desire to have DME that is able to assist with transfer AND gait training.

17. Additional information provided by Respondent as guidance to Petitioner suggests that Medicaid-funded gait trainers are limited, and that any DME not originally funded by Medicaid would not be eligible for repair using Medicaid funds.

#### **CONCLUSIONS OF LAW**

18. By agreement between AHCA and the Department of Children and Families, the Office of Appeal Hearings has jurisdiction to conduct this hearing pursuant to Florida Statutes Chapter 120.



19. Legal authority governing the Florida Medicaid Program is found in Fla. Stat., Chapter 409, and in Chapter 59G of the Florida Administrative Code. Respondent, AHCA, administers the Medicaid Program.

20. The July 2010 DME and Medical Supply Services Coverage and Limitations Handbook (DME Handbook) has been incorporated, by reference, into Fla. Admin. Code R. 59G-4.070(2).

21. This is a Final Order, pursuant to § 120.569 and § 120.57, Fla. Stat.

22. This hearing was held as a *de novo* proceeding, in accordance with Fla. Admin. Code R. 65-2.056.

23. The burden of proof in the instant case is assigned to the Petitioner. The standard of proof in an administrative hearing is preponderance of the evidence. (See Fla. Admin. Code R. 65-2.060(1).)

24. Fla. Stat. § 409.905 addresses mandatory Medicaid services under the State Medicaid Plan:

Mandatory Medicaid services.--The agency may make payments for the following services, which are required of the state by Title XIX of the Social Security Act, furnished by Medicaid providers to recipients who are determined to be eligible on the dates on which the services were provided. Any service under this section shall be provided only when medically necessary and in accordance with state and federal law....

4) HOME HEALTH CARE SERVICES.—The agency shall pay for nursing and home health aide services, supplies, appliances, and durable medical equipment, necessary to assist a recipient living at home. An entity that provides such services must be licensed under part III of chapter 400. These services, equipment, and supplies, or reimbursement therefor [*sic*], may be limited as provided in the General Appropriations Act and do not include services, equipment, or supplies provided to a person residing in a hospital or nursing facility.

25. With regard to the need for DME, Fla. Stat. §409.906(10) states, in relevant part, "The agency may authorize and pay for certain durable medical equipment and supplies provided to a Medicaid recipient as medically necessary."

26. Similarly, the DME Handbook defines the guidelines for DME on page 1-2, as follows:

Durable medical equipment (DME) is defined as medically-necessary equipment that can withstand repeated use, serves a medical purpose, and is appropriate for use in the recipient's home as determined by the Agency for Health Care Administration (AHCA).

27. Consistent with the law, AHCA's agent, eQHealth, performs prior authorization reviews for Medicaid recipients in the state of Florida. Once eQHealth receives a DME request, its medical personnel conduct file reviews to determine the medical necessity of requested equipment, pursuant to the authorization requirements and limitations of the Florida Medicaid Program.

28. Florida Administrative Code Rule 59G-1.010(166) defines medical necessity, as follows:

'Medically necessary' or 'medical necessity' means that the medical or allied care, goods, or services furnished or ordered must:

(a) Meet the following conditions:

1. Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe pain;
2. Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs;
3. Be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational;
4. Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available; statewide; and

5. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider. ...

(c) The fact that a provider has prescribed, recommended, or approved medical or allied care, goods, or services does not, in itself, make such care, goods or services medically necessary or a medical necessity or a covered service.

29. In the instant case, the parties agree that a lift is requested to treat and ameliorate Petitioner's Cerebral Palsy, which prevents her from transferring on her own. The fact that provision of a lift is consistent with Fla. Admin. Code R. 59G-1.010(166)(1) is not in dispute. Similarly, because the respondent agrees that a lift is an appropriate piece of DME equipment, provision of same is in keeping with 59G-1.010(166)(3)'s requirement that a service be consistent with generally accepted professional medical standards, as determined by the Medicaid program.

30. In terms of being specific and individualized, per Fla. Admin. Code R. 59G-1.010(166)(2), Petitioner was not evaluated on any of the referenced models or types of lifts. Although Petitioner's mother attempted to use a friend's Hoyer Lift to transfer the Petitioner, there is no evidence to demonstrate that the particular model used was properly sized to suit Petitioner's needs. The PT evaluation does not indicate that Petitioner and her mother will be able to operate the Rifton Tram, noting that it will be up to the DME provider to ensure the family is trained to use the device safely. No documentation has been submitted to demonstrate that the provider made this assessment.

31. Fla. Admin. Code R. 59G-1.010(166)(2) also requires that any provided service not be in excess of the patient's needs. While it is understandable that Petitioner wishes to progress to standing and ambulating in addition to safely executing transfers,

she has not been evaluated, post-hospitalization, to determine whether this are goals attainable in the short-term. Further, Petitioner has not been assessed on any equipment designed for walking or standing, such that the undersigned would be able determine that the Rifton Tram is the best device to meet those needs.

32. Absent evidence that Petitioner has been fully evaluated and assessed with devices specifically designed towards improving ambulation and standing, the Rifton Tram is found to be excessive for these purposes. Insofar as it has not been tested to ensure it meets the intended purpose of providing safe transfers, it is excessive in that regard, as well. In the same vein, absent evidence that Petitioner would not benefit from and have her current needs met by a less costly device, such as a properly sized Hoyer Lift, Petitioner does not meet the requirements for medical necessity contained within Fla. Admin. Code R. 59G-1.010(166)(4).

33. After examining all testimony and evidence, it is determined that Petitioner does, indeed, require a DME lift device for safe transferring. However, there is insufficient evidence to show that the Rifton Tram is the specific device which is most appropriate for Petitioner's needs, without being in excess of same.

34. Should Petitioner wish to submit a new request for a transfer device and/or walker/stander, she is free to do so. While cursory review of the DME devices available under Medicaid reflects limited gait-trainer options for non-pediatric patients, there may be other ambulatory aids that Medicaid will fund, if such devices are appropriate and medically necessary to meet petitioner's needs.

35. When considering the requirements of Medical Necessity, along with a review of the totality of the evidence and legal authority, the undersigned concludes that

Petitioner has not met her burden of proof to show that respondent's DME denial was improper.

**DECISION**

Petitioner's appeal as to the shower chair is DISMISSED, by agreement of both parties. Petitioner's appeal as to Respondent's denial of the remaining DME request is DENIED. AHCA's determination to deny the Rifton Tram and all requested accessories is hereby affirmed.

**NOTICE OF RIGHT TO APPEAL**

This decision is final and binding on the part of the agency. If the petitioner disagrees with this decision, the petitioner may seek a judicial review. To begin the judicial review, the petitioner must file one copy of a "Notice of Appeal" with the Agency Clerk, Agency for Health Care Administration, 2727 Mahan Drive, Tallahassee, FL 32308-5403. The petitioner must also file another copy of the "Notice of Appeal" with the appropriate District Court of Appeal. The Notices must be filed within thirty (30) days of the date stamped on the first page of the final order. The petitioner must either pay the court fees required by law or seek an order of indigency to waive those fees. The agency has no funds to assist in this review, and any financial obligations incurred will be the petitioner's responsibility.

DONE and ORDERED this 15<sup>th</sup> day of April, 2014,

in Tallahassee, Florida.

*Patricia C. Antonucci*  
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