

STATE OF FLORIDA  
AGENCY FOR HEALTH CARE ADMINISTRATION  
OFFICE OF FAIR HEARINGS



FILED

Apr 04, 2023, 9:24 am

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 22-FH2205

Plan ID No.: [REDACTED]

vs.

CHILDREN'S MEDICAL SERVICES,

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on February 23, 2023, at 1:00 p.m. Eastern Standard Time ("EST").

**APPEARANCES**

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Christian Pacheco  
Senior Director for Quality Improvement  
Children's Medical Services

**STATEMENT OF ISSUE**

The issue is whether Petitioner proved by a preponderance of the evidence that Respondent's decision to deny Petitioner's request for durable medical equipment was incorrect.

**PRELIMINARY STATEMENT**

All parties appeared telephonically. Petitioner's Authorized Representative and [REDACTED]

[REDACTED] appeared on behalf of the Petitioner.

Christian Pacheco, Senior Director of Quality Improvement for Children’s Medical Services (“CMS”), appeared on behalf of Respondent. Dr. Don Fillips (“Dr. Fillips”), Medical Director for CMS, attended as a witness for Respondent.

The following attended as observers: Dr. Andrew Mitinko, Medical Director for CMS; Nicholas Crosby, Licensed Physical Therapist for CMS; Donna Moss-Solomon, Case Manager Supervisor for CMS; Altria White Futrell, Compliance Officer for CMS; Candy Polely, Supervisor for Sunshine Health Plan, Inc.; Tamera Jean-Louis, Occupational Therapist for CMS; Marie Jeudy, Care Manager for CMS; and Raquel Smith, Manager for Case Management for CMS and Lee Ann Williams, Medical/Health Care Program Analyst for the Agency for Health Care Administration (“Agency” or “AHCA”).

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent thirty-six (36) pages of documents. The documents appear in the Office of Fair Hearings’ document management system as file titles: “22-FH2205 Evidence – Petitioner.pdf”<sup>1</sup>; “22-FH2205 Evidence E.O. – petitioner.pdf”<sup>2</sup>; “22-FH2205 Evidence E.O. – petitioner(2).pdf”<sup>3</sup>; and “22-FH2205 Additional Evidence(2).pdf”<sup>4</sup>. Absent an objection from the Respondent, the undersigned admitted the Petitioner’s documents into evidence as Petitioner’s Composite Exhibit 1 (“PCE 1”).

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a four hundred and fifty-four (454)-page evidence packet. The evidence packet appears in the Office of Fair Hearings’ document management system as file title “MFH Packet [Petitioner

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<sup>1</sup> Pages 1 – 24 of PCE1

<sup>2</sup> Pages 25 – 27 of PCE 1

<sup>3</sup> Pages 28 – 30 of PCE 1

<sup>4</sup> Pages 31 – 36 of PCE 1

Surname].pdf”. Absent an objection from Petitioner, the undersigned admitted the Respondent’s evidence packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”).

### **FINDINGS OF FACT**

1. Petitioner is an enrolled member of CMS. See page 2 of RCE 1. CMS is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.
2. At the date of the hearing, Petitioner was [REDACTED]. *Id.* at 10. Petitioner is diagnosed with [REDACTED]. *Id.* at 28.
3. Petitioner requested a power wheelchair (Permobil, Inc. F5 Base Corpus VS, F5 MPO) including a Power Standing Function – VS Seat. *Id.* at 11.
4. In a Notice of Adverse Benefit Determination (“NABD”), dated September 27, 2022, Respondent denied Petitioner’s request. *Id.* at 4-8. The NABD explained the basis of the denial as follows:

We determined that your requested services are not medically necessary because the services do not meet the reason(s) checked below: (See Rule 59G-1.010).

...

- Must be individualized, specific, consistent with symptoms or diagnosis of illness or injury and not be in excess of the patient’s needs.

...

The facts that we used to make our decision are: Centene Clinical Policy on DME Coverage Guidelines, CP.MP.107, FLORIDA MEDICAID DURABLE MEDICAL EQUIPMENT AND MEDICAL SUPPLY SERVICES COVERAGE AND LIMITATIONS HANDBOOK, Payment Policy: Wheelchairs and Accessories, Reference Number: CC.PP.502, Product Types: All, Last Review Date: 09/2020. These services have also been reviewed under EPSDT (Early and Periodic Screening, Diagnostic and Treatment).

Rationale: The requested durable medical equipment a K0861 Power wheelchair, group 3 standard, multiple power option, sling/solid seat/back, patient weight capacity up to and including 300 pounds x 1 (Permobil F5 Base Corpus and accessories including power tilt, power recline, power elevating leg rests, power

seat elevator, and power standing functions) is denied as not medically necessary (needed) because, the submitted clinical documentation (record) does not identify and explain specific MRADLs, or primary role functions that will be achieved with the requested wheelchair base that could not be attained with an alternative custom power mobility device. The requested power seat elevator and power standing features are considered a convenience item, are not primarily medical in nature, and not medically necessary.

...

Pages 4 – 5 of RCE 1.

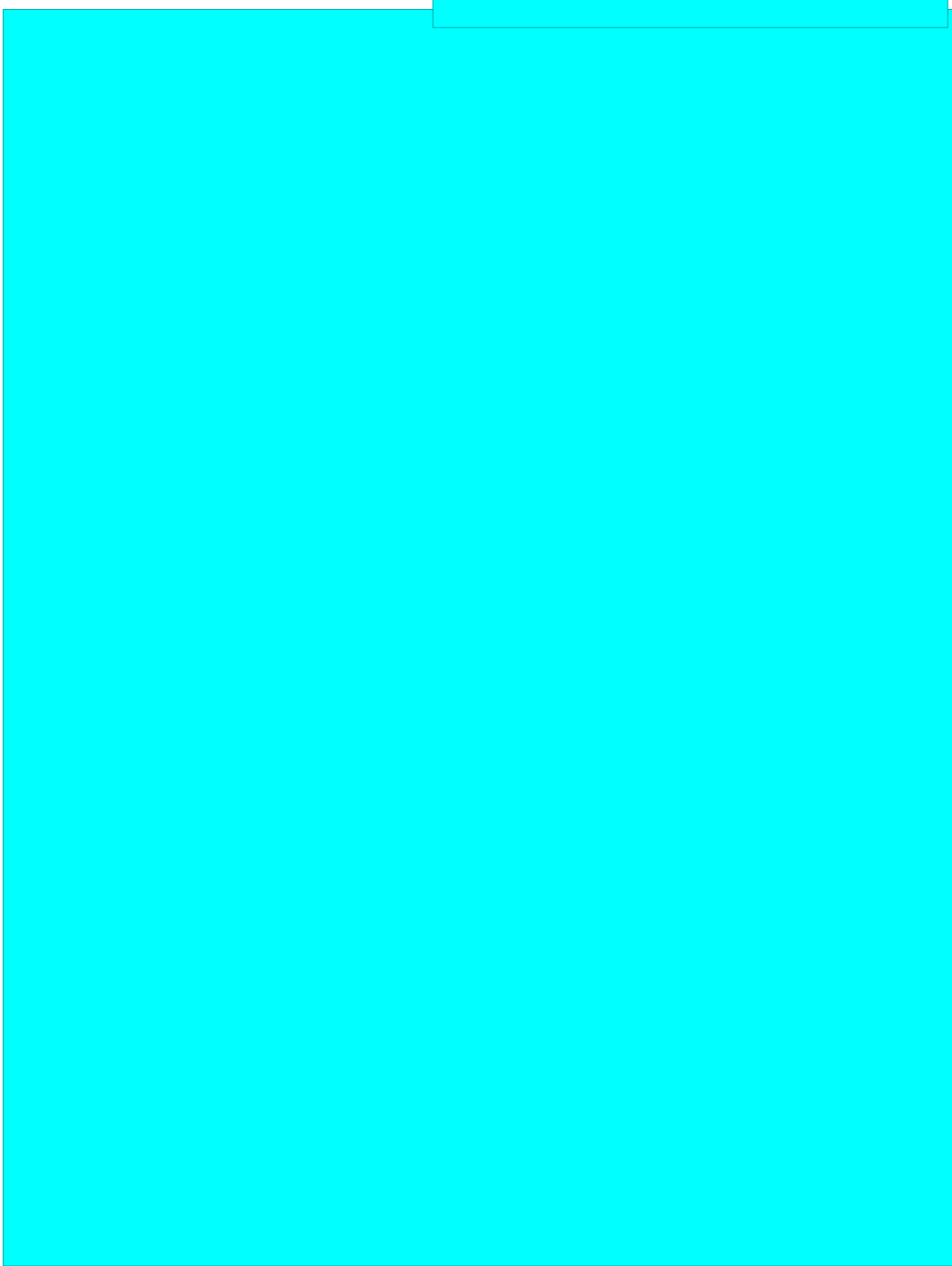
5. In a letter, dated October 20, 2022, Valentina Bolanos, PT and Dr. Edwin Rodolfo Cruz-Zeno, explained as follows:

[REDACTED]

[Redacted text block 1]

[Redacted text block 2]

[Redacted text block 3]



These pieces of equipment are medically necessary for [Petitioner]. These item request

...

6. Petitioner requested reconsideration of the Respondent’s decision. In a Notice of Plan Appeal Resolution (“NPAR”), dated November 8, 2022, Respondent upheld its decision. *Id.* at 38 – 40.

7. On November 28, 2022, Petitioner requested a Fair Hearing to challenge the denial of durable medical equipment. On January 23, 2023, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for February 23, 2023, at 1:00 p.m. EST.

8. Petitioner’s provider, [REDACTED] wrote a letter a letter, dated February 14, 2023, that stated as follows:

The above mentioned individual is a patient in my office that I am following for a [REDACTED]. [Petitioner] has a [REDACTED]  
[REDACTED]  
[REDACTED] It is imperative that [Petitioner] obtain a standing wheelchair to prevent further progression of [REDACTED]. The standing wheelchair would help with [Petitioner’s] [REDACTED] provide [REDACTED] improved function.

...

Page 27 of PCE 1.

9. The following table was provided to show what Mobility Related Activities of Daily Living (“MRADL”) would benefit from a standing wheelchair:

[REDACTED]	[REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED]



		[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

...

Pages 19 – 21 of PCE 1

10. [REDACTED] testified to the following:

- a. Petitioner is [REDACTED]
- b. Petitioner receives [REDACTED]
- c. The request is for a standing wheelchair. The standing wheelchair will enable Petitioner to accomplish more than what [REDACTED] with a regular wheelchair. For example:

- i. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

d. [REDACTED] is concerned about the long-term effects of being in a standard sitting wheelchair.

e. [REDACTED] is the only one able to lift Petitioner.

f. The chair can completely recline horizontally.

g. When Petitioner tried out the standing wheelchair a video was made of [REDACTED] performing tasks [REDACTED]. This video was sent to Respondent when the request was made.

11. Dr. Fillips is a Medical Director for CMS. Dr. Fillips testified to the following:

- a. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

- c. [REDACTED]
- d. Petitioner does need a power wheelchair.
- e. The Respondent's decision was based on the documents received during the initial request for the equipment.

**CONCLUSIONS OF LAW**

12. The Agency's Office of Fair Hearings has jurisdiction over the subject matter of this proceeding and the parties pursuant to section 409.285(2) of the Florida Statutes (2019). This order is the final administrative decision of AHCA under Fla. Stat. § 409.285(2)(a).

13. This hearing was held as a de novo proceeding pursuant to Fla. Admin. Code R. 59G-1.100(17)(b).

14. Because Petitioner is requesting a new service, Fla. Admin Code R. 59G-1.100(17)(g) assigns the burden of proof to Petitioner. The standard of proof in an administrative hearing is a preponderance of the evidence. The preponderance of the evidence standard requires proof by "the greater weight of the evidence" (Black's Law Dictionary at 1201, 7th Ed.)

15. Petitioner's request for a power wheelchair is governed by the Florida Medicaid Durable Medical Equipment and Medical Supply Services Coverage and Limitations Handbook (July 2010) ("DME Coverage Handbook"), incorporated by reference in Fla. Admin. Code R. 59G-4.070. The DME Coverage Handbook provides the following:

**Durable Medical Equipment (DME):** 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).

...

**Services Limited to Recipients Under 21 Years of Age:**

Many durable medical equipment (DME) items and services are limited to recipients under 21 years of age.

To determine whether a service is available to all recipients or limited to recipients under age 21 years of age, refer to the DME and Medical Supply Services Provider Fee Schedules.

...

**Authorized Prescribers of Durable Medical Equipment and Medical Supplies:**

All durable medical equipment, medical supplies, and orthotic and prosthetic devices must be prescribed by the Medicaid recipient's:

- Treating physician, or
- Treating physician's physician assistant, or
- Treating physician's advanced registered nurse practitioner (ARNP), or
- Treating podiatrist.

The prescribing professional must include the date, [redacted] signature, and current professional license number or national provider identification number on each documentation of medical necessity when requesting DME and services or medical supplies.

...

**Service Criteria:**

All DME, medical supplies, and orthotics and prosthetic devices must be:

- Medically necessary, and
- Functionally appropriate for the individual recipient, and
- Adequate for the intended medical purpose, and
- For conventional use, and
- For the exclusive use of the recipient.

DME items requested or supplied must not duplicate or perform the same function as other DME equipment or medical supplies currently in the recipient's possession.

...

***Non-Covered Services and Exclusions***

...

- Powered wheelchair component for standing

...

16. The DME Coverage Handbook states the following with respect to acceptable documentation of Medical Necessity:

**Acceptable Documentation of Medical Necessity**

Medical necessity must be established for each service and documented, at a minimum, with the following:

- Written prescription not more than 12 months old, with the printed name and the dated signature of the recipient's treating physician or the treating physician's ARNP or physician assistant. The prescription can be received by the DME and medical supply provider before or after the DME service has been initiated, but the prescription cannot be dated more than 21 days after the initiation of service (date of service); or
- Current hospital discharge plan with the dated signature of the recipient's treating physician or the treating physician's ARNP or physician assistant that clearly describes the type of DME item or service ordered; or
- Certificate of Medical Necessity (CMN) not more than 12 months old, which includes the printed name and the dated signature of the recipient's treating physician or the treating physician's ARNP or physician assistant. Medicaid prohibits vendors from preparing sections of the CMN that are to be completed by the physician or authorized prescriber. The CMN cannot be dated more than 21 days after the initiation of service (date of service); and Plan of care, if a home health agency.

...

All documentation of medical necessity must include the type of medical equipment, services or consumable goods ordered, including the type, quantity, frequency and length of need ordered or prescribed. Prescribed oxygen services must include rates of flow, concentration, level of frequency, duration of use, and circumstances under which oxygen is to be used. If this information is not included, a new prescription that clarifies the order is required.

17. The DME Coverage Handbook states the following with respect to requests for wheelchairs:

**Description**

A wheelchair is a seating device system mounted on wheels used to transport a non-ambulatory individual or an individual with severely limited mobility.

**Service Requirements**

Medicaid will reimburse for a wheelchair when the recipient is non-ambulatory or has severely limited mobility and it is medically documented that a wheelchair is medically necessary to accommodate the recipient's physical characteristics.

Medicaid will reimburse and provide maintenance for only one wheelchair (regardless of type) or power operated vehicle (POV) procedure code per recipient, per maximum limit period, as stated in the DME and Medical Supply Services Provider Fee Schedule. The following types of wheelchairs and POVs devices require prior authorization:

- Customized manual wheelchairs,
- Customized power wheelchairs,
- Non-custom power wheelchairs,
- Motorized scooters (POV), and
- Power Conversion kits.

Note: See the DME and Medical Supply Services Provider Fee Schedules for the maximum limits.

...

Medicaid will not approve a power wheelchair (custom or non-custom), power operated vehicle (POV), or wheelchair power upgrade, without documentation from an independent licensed physical therapist or occupational therapist or physiatrist, which documents the recipient's inability to perform activities of daily living in the home and the medical consequences that will occur without the equipment requested.

When a motorized wheelchair (custom or non-custom) or power-operated vehicle is prescribed, the documentation must state that the recipient has successfully demonstrated [redacted] consistent ability to safely and independently operate a powered mobility device or wheelchair.

The recipient must meet all of the following conditions:

- Has documented, severe abnormal upper extremity dysfunction or weakness; and
- Has demonstrated that [redacted] possesses sufficient eye and hand perceptual capabilities and the cognitive skills necessary to safely operate and guide the chair or POV independently, and is capable of evacuating a residence or building with minimal or no verbal prompting in case of an emergency; and
- Currently resides in or will primarily use the equipment in an environment conducive to the use of a motorized wheelchair of the type and size wheelchair requested.

Clinical documentation of a power wheelchair trial, supervised by an independent licensed physical therapist or occupational therapist or physiatrist, must accompany any first request for a custom power wheelchair.

Documentation of the recipient's current activities of daily living capabilities, ambulation, and transfer skills must also be included in the physical therapist's, occupational therapist's, or the physiatrist's clinical documentation.

Detailed documentation of home accessibility is required in a prior authorization request for any extra-wide wheelchair or powered mobility device.

Alternative funding sources should be explored for power or motorized wheelchairs and power mobility devices needed specifically for community leisure, vocational, or school use.

...

### **Wheelchair Evaluation**

All wheelchair evaluations for custom manual and power wheelchairs must be completed by a licensed physical therapist, occupational therapist, or physiatrist using either the Custom Wheelchair Evaluation, AHCA Med Serv Form 015, (Appendix A) or another document that contains the same information that is requested on the form.

All wheelchair evaluations are valid for up to six months from the date the evaluation is signed and dated by the evaluator.

Documentation of home accessibility is required in a prior authorization request for an extra-wide wheelchair, custom or non-custom power wheelchair or POV.

...

18. States must provide Early and Periodic Screening, Diagnostic, and Treatment (“EPSDT”) services to Medicaid-eligible children under age 21 when requested under the Medicaid state plan. See 42 U.S.C. § 1396a(a)(43); 42 U.S.C. § 1396d(a)(4). According to 42 U.S.C. § 1396d(r)(5), EPSDT services mean, in relevant part, the following items and services:

Such other necessary health care, diagnostic services, treatment, and other measures described in subsection (a) of this section to correct or ameliorate defects and physical and mental illness and conditions discovered by the screen services, whether or not such services are covered under the state plan.

19. Petitioner is under age 21, and therefore EPSDT applies to   request for services. However, a state may place medical necessity limitations on EPSDT services. See 42 C.F.R. §§ 440.230(a), (b), (d). Fla. Stat. § 409.905(2) limits EPSDT services with a medical necessity standard:

The [Agency] shall pay for early and periodic screening and diagnosis of a recipient under age 21 to ascertain physical and mental problems and conditions and all services determined by the agency to be medically necessary for the treatment, correction, or amelioration of these problems and conditions, including personal

care, private duty nursing, durable medical equipment, physical therapy, occupational therapy, speech therapy, respiratory therapy, and immunizations.

20. The Definitions Policy, incorporated by reference in Fla. Admin. Code R. 59G-1.010,

defines “Medically Necessary” or “Medical Necessity” as follows:

The medical or allied care, goods, or services furnished or ordered must meet the following conditions:

- Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate pain
- 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
- Be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational
- 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
- Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient’s caretaker, or the provider

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.

21. Petitioner requested a power wheelchair with power standing function. *See* ¶ 3.

Respondent denied Petitioner’s request in the NABD, dated September 27, 2022. *See* ¶ 4.

Respondent explained that requested item was not medically necessary as it was not “individualized, specific, consistent with symptoms or diagnosis of illness or injury” and was “in excess of the patient's needs.” *Id.* Respondent further explained that the documentation provided does not “identify and explain specific MRADLs, or primary role functions that will be achieved with the requested wheelchair base that could not be attained with an alternative custom power mobility device.” *Id.*

22. As Petitioner bears the burden of proof, Petitioner must show that Respondent’s denial was incorrect. As provide in the DME Policy, “Medicaid will reimburse for a wheelchair when the recipient is non-ambulatory or has severely limited mobility and it is medically documented that a wheelchair is medically necessary.” See ¶ 16. Further, powered wheelchair components for standing are not covered under Florida Medicaid. *Id.* However, as Petitioner is under twenty-one (21) years of age, [REDACTED] may still be eligible for the equipment if [REDACTED] can demonstrate that it is medically necessary. See ¶¶ 19 – 20.

23. As shown by the record, Petitioner is diagnosed with [REDACTED] and is wheelchair bound. See ¶ 2. It is undisputed by the parties that Petitioner needs a new electric power wheelchair. See ¶ 11. However, the parties dispute whether it is medically necessary for Petitioner to have a power standing feature included with [REDACTED] wheelchair. At the Fair Hearing, [REDACTED] presented a table explaining the MRADLs that Petitioner could perform with a power standing feature on [REDACTED] wheelchair. See ¶ 9. [REDACTED] elaborated that, with this feature, Petitioner would be able to [REDACTED]  
[REDACTED]  
[REDACTED] See ¶ 10. In all, [REDACTED] provided excellent examples of the benefits that the power standing feature can provide. However, Dr. Fillips provided credible testimony that the feature is not medically necessary. Here, Dr. Fillips explained that that an alternative device (a supine stander) could be utilized by Petitioner rather than the requested device. See ¶ 11. [REDACTED] further explained that the supine stander would provide more support for [REDACTED] head and neck. *Id.* Lastly, Dr. Fillips testified that Petitioner would still need caregiver assistance, even with the power standing wheelchair. *Id.* Although Petitioner established that the power wheelchair with power


standing feature would be a great benefit to him, ultimately Respondent demonstrated that the device is “in excess of the patient’s needs.”

24. Upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Petitioner did not prove by a preponderance of the evidence that the power wheelchair with power standing feature is medically necessary. Looking at all the evidence relevant to the particular needs of the Petitioner, Petitioner has demonstrated that the power wheelchair with power standing feature is not necessary to correct or ameliorate a defect or a physical and mental illness or condition. Accordingly, Petitioner has not shown that Respondent’s denial was incorrect.

**IT IS HEREBY ORDERED AND ADJUDGED THAT:**

Respondent’s denial is **AFFIRMED**. Petitioner’s appeal based on Respondent’s denial is **DENIED**.

**DONE And ORDERED** This 4th day of April 2023, in Tallahassee, Leon County, Florida.

 Joseph Mabry  
22-FH2205  
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**JOSEPH MABRY, Hearing Officer**  
**Agency for Health Care Administration**  
**Office of Fair Hearings**  
**2727 Mahan Drive, Mail Stop # 11**  
**Tallahassee, FL 32308-5407**

**NOTICE OF A RIGHT TO JUDICIAL REVIEW**

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW, WHICH SHALL BE INSTITUTED BY FILING THE ORIGINAL NOTICE OF APPEAL WITH THE AGENCY

CLERK OF AHCA, AND A COPY, ALONG WITH THE FILING FEE PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE RENDITION OF THE ORDER TO BE REVIEWED.

**Copies Furnished To:**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**CMS**  
**CMSPlanContract@flhealth.gov**

**AHCA Medicaid Hearing Unit**  
**MedicaidHearingUnit@ahca.myflorida.com**