



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MPA/169052

PRELIMINARY RECITALS

Pursuant to a petition filed September 30, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on December 08, 2015, at Appleton, Wisconsin.

The issue for determination is whether the agency properly denied the Petitioner’s PA request for orthotics.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Kristen Derenne

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Outagamie County.

2. The Petitioner's relevant diagnosis is plantar fibromatosis. Petitioner requests foot orthotics due to pain in her feet. Medical documentation indicates that her left foot is slightly flatter than her right. It further indicates that she has some dislocated metatarsal shafts on her left foot.
3. On August 18, 2015, the agency received a PA request from the Petitioner's provider, [REDACTED], to provide foot orthotics to the Petitioner.
4. On August 18, 2015, the agency denied the Petitioner's request.
5. On September 30, 2015, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

The MA program may only reimburse providers for medically necessary and appropriate health care services and equipment listed in Wis. Stat., §§49.46(2) and 49.47(6)(a), as implemented by the Wisconsin Administrative Code, chapter DHS 107.

The administrative code provision governing durable medical equipment provides, in relevant part, as follows:

DHS 107.24. Durable Medical Equipment and Supplies . . .

(2) COVERED SERVICES . . . (c) Categories of durable medical equipment. The following are categories of durable medical equipment covered by MA:...

3. Orthoses. These are devices which limit or assist motion of any segment of the human body. They are designed to stabilize a weakened part or correct a structural problem. Examples are arm braces and leg braces....

(4) OTHER LIMITATIONS . . .

(f) Orthopedic or corrective shoes or foot orthoses shall be provided only for postsurgery conditions, gross foot deformities, or when attached to a brace or a bar. These conditions shall be described in the prior authorization request....

(5) NON-COVERED SERVICES. The following services are not covered services:

- (a) Foot orthoses or orthopedic or corrective shoes for the following conditions:
1. Flattened arches, regardless of the underlying pathology;
 2. Incomplete dislocation or subluxation metatarsalgia with no associated deformities;
 3. Arthritis with no associated deformities; and,
 4. Hypoallergenic conditions....

A ForwardHealth Update No. 2015-37 (August, 2015) revised the agency's policy regarding coverage of orthopedic or corrective shoes and foot orthotics. The policy mirrors the language of the statutes as follows:

ForwardHealth covers orthopedic or corrective shoes and foot orthotics in the following situations:

- Postsurgery conditions

- Gross deformities
- When attached to a bar or brace

...

ForwardHealth does not cover the following:

- Orthopedic or corrective shoes or foot orthotics for the following conditions:
 - Flattened arches, regardless of the underlying pathology
 - Incomplete dislocation or subluxation metatarsalgia with no associated deformities
 - Arthritis with no associated deformities
 - Hypoallergenic conditions
- Services denied by Medicare for lack of medical necessity
- Delivery or set up charges for equipment as a separate service
- Fitting, adapting, adjusting, or modifying a prosthetic or orthotic device or corrective or orthopedic shoes as a separate service

The agency denied the Petitioner's PA request because there is no documentation that Petitioner has a post-surgical condition, gross foot deformity or has an attached bar or brace. She does have flattened arches and dislocation of metatarsals, conditions that are specifically not covered.

At the hearing, the Petitioner testified that she has bone spurs as well but it is not noted in the medical documentation. If Petitioner has surgery to remove the spurs, orthotics may be covered. However, based on the information presented, I must conclude that the agency properly denied the Petitioner's PA request because the Petitioner does not have the conditions required by law for coverage of orthotics.

CONCLUSIONS OF LAW

The agency properly denied the Petitioner's PA request for orthotics.

THEREFORE, it is

ORDERED

That 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, 5005 University Avenue, Suite 201, 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, Madison, Wisconsin 53703, **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 Milwaukee,
Wisconsin, this 25th day of January, 2016

\sDebra Bursinger
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 January 25, 2016.

Division of Health Care Access and Accountability