



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MPA/170237

PRELIMINARY RECITALS

Pursuant to a petition filed November 18, 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 17, 2015, at Waukesha, Wisconsin.

The issue for determination is whether a prior authorization request for phentermine meets the standards necessary for payment by Wisconsin Medicaid.

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: Lynn Radmer, R. Ph.

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

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Waukesha County.

2. A prior authorization request seeking Wisconsin Medicaid program payment for phentermine was submitted on behalf of Petitioner on or about September 28, 2015. Phentermine is an anti-obesity drug.
3. Petitioner has had bariatric surgery.
4. The Medicaid denied this prior authorization because the Wisconsin Medicaid program does not pay for phentermine for a person who has had bariatric surgery.

### DISCUSSION

ForwardHealth Update No. 2014-78, published in December 2014 and effective January 1, 2015, established Wisconsin Medicaid program criteria changes for a number of drugs and made changes to pharmacy policy. One of the changes revised prior authorization requirements for anti-obesity drugs. Among other criteria, the policy changes included a provision that mandated denial of Medicaid payment for anti-obesity drugs where the person for whom the request was made had had bariatric surgery. Id., page 9, column 1.

The Division of Hearings and Appeals has no authority to change or ignore these requirements.

### CONCLUSIONS OF LAW

That this prior authorization request seeking Medicaid payment for phentermine was correctly denied as it is not a covered drug where the person for whom payment for the drug was requested has had bariatric surgery and Petitioner has had that surgery.

**THEREFORE, it is**

**ORDERED**

That this 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 15th day of February, 2016

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\sDavid D. Fleming  
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 February 15, 2016.

Division of Health Care Access and Accountability