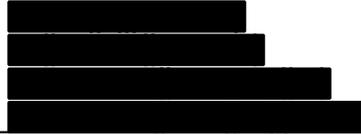




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

HMO/172475

PRELIMINARY RECITALS

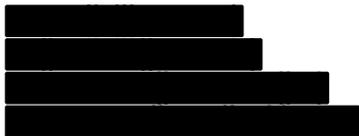
Pursuant to a petition filed March 02, 2016, under Wis. Stat. § 49.45(5)(a), and Wis. Admin. Code § HA 3.03, to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance (MA), a hearing was held on April 12, 2016, at Waukesha, Wisconsin.

The issue for determination is whether the agency properly denied the Petitioner's request for a continuous glucose monitoring device.

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: [Redacted]

Division of Health Care Access and Accountability
Madison, WI

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Waukesha County. She is 13 years old.
2. Petitioner's diagnoses include diabetes type 1 which was diagnosed in December, 2014. Since her diagnosis, the Petitioner's diabetes is managed with multiple daily insulin injections and

dietary modification. Petitioner continues to have significant variability in her glycemic control which places her at risk for hypoglycemic reactions.

3. The Petitioner's physicians noted the following reasons for recommending the CGM for the Petitioner:
 - Elevated Hgb A1C 1.0% above the normal range and/or above 7.0%
 - Dawn phenomenon
 - Widely fluctuating blood glucose levels between 40 – 400mg/dL
 - Exercise induced hypoglycemia
 - Nocturnal Hypoglycemia – delayed from exercise
 - Day to day schedule changes
4. The Dexcom CGM is an FDA-approved device, worn by patients with diabetes that records glucose levels throughout the day and night and provides continuous real-time readings and data about trends in glucose levels. Glucose levels are recorded every 5 minutes, 24 hours/day. This information is used to detect trends and track patterns to provide corrective treatment action. The device is equipped with alarms to alert patients of hyperglycemia or hypoglycemia.
5. On or about December 2, 2015, Petitioner's provider, [REDACTED] submitted a request to the Petitioner's HMO, Children's Community Health Plan, for a Dexcom Continuous Glucose Monitoring System (CGM).
6. On January 28, 2016, the Petitioner received a notice from the HMO denying her request for a continuous glucose monitoring system because CGM as a component of routine diabetes management is not a covered benefits in the MA program.
7. On March 2, 2016, an appeal was filed on behalf of the Petitioner with the Division of Hearings and Appeals.

DISCUSSION

Medicaid, also known as Medical Assistance, MA, and Title 19, is a state and federal program that assists individuals at certain income levels to pay their medical bills. Persons who are on the Wisconsin Medicaid or BadgerCare Plus programs in Waukesha County are mandated to receive their Medicaid or BadgerCare Plus benefits through an HMO. The HMOs are under contract to provide at least the same services as those provided to persons on straight, fee-for service Medicaid or BadgerCare Plus, as stated in the HMO contract. MA recipients enrolled in HMOs must receive medical services from the HMOs' providers, except for referrals or emergencies. §DHS 104.05(3).

The coverage policy for the MA program, including the HMOs that provide service through contract with the MA program, regarding continuous glucose monitoring is contained in ForwardHealth Update No. 2015-04 (January, 2015). That policy states as follows:

Professional continuous glucose monitoring utilizing provider-owned equipment is covered for BadgerCare Plus and Medicaid members as a supplement to standard care for diabetes when the primary care provider or attending provider determines such monitoring is medically necessary to establish an optimal insulin regimen. Results must be monitored and interpreted under physician supervision.

...

Documentation Requirements

The member's medical record must include documentation supporting the medical necessity of professional continuous glucose monitoring to establish optimal insulin regimens for members with insulin-requiring diabetes and documented inadequate glycemic control. The documentation must also include monitor calibration, member training, sensor removal, and recording printout, as well as the physician report with interpretation and findings based on information obtained during monitoring.

Personal Continuous Glucose Monitoring (Purchased for Individual Member)

Personal continuous glucose monitoring is noncovered. This includes member-owned continuous glucose monitoring devices, meters, test strips, and other supplies directly related to personal continuous glucose monitoring.

Information Regarding Managed Care Organizations

This ForwardHealth Update contains fee-for-service policy and applies to services members receive on a fee-for-service basis only. For managed care policy, contact the appropriate managed care organization. Managed care organizations are required to provide at least the same benefits as those provided under fee-for-service arrangements.

The Petitioner requests a personal CGM device. The policy stated above is clear that this is not a covered service. The petitioner requests an exception to the policy or equitable relief which allows a tribunal to consider the fairness of a situation and go beyond the four corners of the law. But administrative law judges have no equitable powers. See, *Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 F.Supp. 540, 545 (E.D. Wis.1977). This means that I must follow applicable statutes, regulations and policies as they are written. In this case, because the policy clearly provides that a personal CGM for the Petitioner is a non-covered service, I must affirm the decision of the agency to deny the service to the Petitioner.

CONCLUSIONS OF LAW

The Dexcom CGM requested by the Petitioner is a non-covered service and the agency's denial was proper.

THEREFORE, it is

ORDERED

That the Petitioner's appeal be 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 27th day of May, 2016

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

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

The preceding decision was sent to the following parties on May 27, 2016.

Division of Health Care Access and Accountability