



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

HMO/172500

PRELIMINARY RECITALS

Pursuant to a petition filed March 04, 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 (DHCAA) in regard to Medical Assistance (MA), a telephonic hearing was held on May 05, 2016, at Milwaukee, Wisconsin. At petitioner's request the record was held open for 35 days to allow her time to submit any additional documentation to support her appeal. On June 7, 2016 petitioner submitted a one-page document from [redacted]s, which was the forwarded to petitioner's HMO for review and comment. On June 20, 2016 Dr. [redacted] submitted his written response. As it is unclear if he also forwarded that response to petitioner, it is attached to this Decision for her review.

The issue for determination is whether the petitioner is entitled to MA reimbursement for a panniculectomy.

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: Dr. [redacted], Anthem Blue Cross Blue Shield for:
Division of Health Care Access and Accountability
PO Box 6470
Madison, WI 53716-0470

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The petitioner's provider submitted a Prior Authorization (PA) request to her HMO on the petitioner's behalf requesting MA reimbursement for a panniculectomy.
3. On July 6, 2015 the HMO issued a notice to petitioner denying the PA request because there was no evidence to show that all of the guidelines for approving the panniculectomy were met.
4. On March 4, 2016 the petitioner filed an appeal of the denial.
5. On March 23, 2016 the DHCAA reviewed the medical evidence and agreed with the HMO that petitioner did not meet all of the guidelines necessary to approve the service.

DISCUSSION

Surgeries for the removal of excess skin require prior authorization. Wis. Admin. Code, §DHS 107.06(2)(zf). When prior authorization is requested, the DHCAA reviews the request to determine whether the surgery is medically necessary. Wis. Admin. Code, §DHS 107.02(3)(e). It is the provider's responsibility to justify the need for the service. Wis. Admin. Code, §DHS 107.02(3)(d)6.

The DHCAA's approval criteria for such a surgery are as follows:

Panniculectomy surgery is considered medically necessary if the panniculus hangs below the level of the pubis **and** either one of the following criteria is met:

- The medical record documents that the panniculus causes chronic intertrigo that is refractory to at least three months of appropriate medical therapy or consistently recurs over three months while receiving appropriate medical therapy.
- There is a presence of a significant functional deficit that prohibits or profoundly impairs the ability to perform activities of daily living due to a significant physical deformity or disfigurement resulting from the excess skin folds, and surgery is expected to restore or greatly improve the functional deficit. Examples of this would be deficits that prohibit a member from being able to properly shower or toilet.

...

Note: If the procedure is being performed following significant weight loss, in addition to meeting the PA criteria, there should be evidence documented in the member's medical records that the individual has maintained a stable weight for at least six months. If the weight loss is the result of bariatric surgery, panniculectomy should not be performed until at least 18 months after bariatric surgery and only when weight has been stable for at least the most recent six months.

See Forward Health Update, Topic #16497, at:

<https://www.forwardhealth.wi.gov/WIPortal/Subsystem/KW/Display.aspx?ia=1&p=1&sa=50&s=3&c=638&nt=Panniculectomy+and+Lipectomy+Surgeries>

The problem with petitioner's PA request is that the provider did not document any of the foregoing criteria. Rather, the evidence shows that her intertrigo has been controlled with appropriate creams, no significant functional deficit was identified to show a profound impairment, no photographs were provided to show the panniculus hangs below the level of the pubis, and there was no evidence of attempted conservative treatment such as a supervised weight loss program. The physician notes

specifically state that he advised petitioner that weight loss would improve the results of a panniculectomy. The information submitted by the petitioner post-hearing shows a note from a visit with a dietician in November **2009**. There is no indication that a weight loss trial occurred thereafter. Based on the information submitted, I must concur with the denial.

Petitioner's provider can always file another PA request with better documentation.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The agency correctly denied a request for a panniculectomy because there was insufficient documentation to show it was medically necessary.

THEREFORE, it is

ORDERED

The petition for review herein 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.

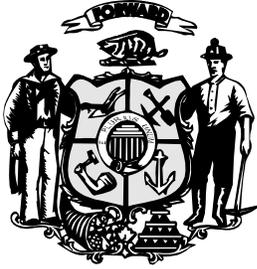
APPEAL TO COURT

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 24th day of June, 2016

\sKelly Cochrane
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 June 24, 2016.

Division of Health Care Access and Accountability