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**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

In the Matter of

██████████  
██████████  
██████████

**DECISION**

Case #: HMO - 175024

**PRELIMINARY RECITALS**

Pursuant to a petition filed on June 15, 2016, under Wis. Stat. § 49.45(5)(a), and Wis. Admin. Code § HA 3.03, to review a decision by ██████████ regarding Medical Assistance (MA), a hearing was held on July 13, 2016, by telephone.

The issue for determination is whether ██████████ correctly denied coverage of a pelvic MRI to diagnose prostate cancer.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

██████████  
██████████  
██████████

█  
█

Respondent:

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

By: Dr. ██████████  
██████████

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # ) is a resident of Milwaukee County.
2. On May 3, 2016, ██████████ (hereinafter referred to as ██████████), sent the Petitioner a notice, indicating that the request for coverage of a pelvic MRI was being denied. (Exhibit 2, attachment 3)

3. Petitioner filed a grievance, so [REDACTED] sent Petitioner's records to a firm, not owned by [REDACTED], called MCMC, who agreed that use of the MRI at this time was not appropriate. (Exhibit 2, attachment 6)
4. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on June 15, 2016. (Exhibit 1)
5. Petitioner has an elevated PSI of 4.6, but has not had a biopsy done. (Testimony of Petitioner; Exhibit 2, attachment 4)
6. An MRI showing suspicious lesions was performed in 2015. (Exhibit 2, attachment 6; testimony of [REDACTED])

### DISCUSSION

Under the discretion allowed by *Wis. Stat., §49.45(9)*, the Department of Health Services (DHS) requires MA (Medical Assistance) recipients to participate in HMOs. *Wis. Admin. Code, §DHS 104.05(2)(a)*. MA recipients enrolled in HMOs must receive medical services from the HMOs' providers, except for referrals or emergencies. *Wis. Admin. Code, §DHS 104.05(3)*.

The criteria for approval by a managed care program contracted with the DHS are the same as the general MA criteria. See *Wis. Admin. Code, §DHS 104.05(3)* which states that HMO enrollees shall obtain services "paid for by MA" from the HMO's providers. The department must contract with the HMO concerning the specifics of the plan and coverage. *Wis. Admin. Code, § DHS 104.05(1)*.

If the enrollee disagrees with any aspect of service delivery provided or arranged by the HMO, the recipient may file a grievance with DHS or appeal to the Division of Hearings and Appeals.

Just as with regular MA, when the department denies a grievance from an HMO recipient, the recipient can appeal the DHS's denial within 45 days. *Wis. Stat., §49.45(5)*, *Wis. Admin. Code, § DHS 104.01(5)(a)3*.

In the case at hand, the Petitioner contests a decision by [REDACTED] to deny coverage of a pelvic MRI to diagnose prostate cancer.

When determining whether to approve any service, the HMO, like DHS, must consider the generic prior authorization review criteria listed at *Wis. Admin. Code, §DHS §107.02(3)(e)*:

(e) *Departmental review criteria*. In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

- 1. The medical necessity of the service;**
- 2. The appropriateness of the service;**
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
- 7. The effective and appropriate use of available services;**
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and

12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.

*Emphasis added*

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
  1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
  2. **Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;**
  3. Is appropriate with regard to generally accepted standards of medical practice;
  4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
  5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
  6. Is not duplicative with respect to other services being provided to the recipient;
  7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
  8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
  9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

*Emphasis Added; Wis. Admin. Code, §DHS 101.03(96m)*

Petitioner has the burden to prove, by a preponderance of the credible evidence, that his request for the MRI meets approval criteria. Gonwa v. Department of Health and Family Services, 2003 WI App 152, 265 Wis.2d 913, 668 N.W.2d 122 (Ct.App.2003)

██████████ from ██████████ testified that it is not appropriate to do an MRI at this point, because the Petitioner has not yet had a biopsy of the suspicious mass completed. ██████████ testified that he has practiced internal medicine for 25 years and that it is standard practice to do a biopsy before proceeding to an MRI. ██████████ testified that MRIs are more traditionally used after a biopsy confirms the presence of cancer to evaluate the extent of the cancer and determine the best course of treatment.

The urologist from MCMC who reviewed Petitioner’s case indicated that performing MRIs without a confirmed diagnosis of prostate cancer is generally not considered standard practice. (Exhibit 2, attachment 6)

██████████, the Chief Medical Officer for the Department of Health Services also indicated in her consultant letter that, “Prostate MRI has not, however, replaced the need for biopsy to yield the tissue required for confirmation of the cancer itself.” (Exhibit 2, attachment 4) ██████████ further indicated that MRIs are now being used for guiding targeted prostate biopsies, but this is only used for men who have elevated PSI, but negative biopsies.

Based upon the foregoing, it is found that use of the MRI before completing a biopsy of the suspicious mass is not consistent with standards of acceptable quality of care applicable to Petitioner’s circumstances and therefore, falls outside the definition of medical necessity established in *Wis. Admin. Code, §DHS*

101.03(96m) As such, [REDACTED] correctly determined that coverage of the MRI, at this time, is not appropriate.

**CONCLUSIONS OF LAW**

[REDACTED] correctly denied Petitioner’s request for coverage of a pelvic MRI to diagnose prostate cancer.

**THEREFORE, it is**

**ORDERED**

That the petition 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, **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 22nd day of August, 2016

\s \_\_\_\_\_  
Mayumi M. Ishii  
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 August 22, 2016.

Division of Health Care Access and Accountability