



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

MPA/142373

PRELIMINARY RECITALS

Pursuant to a petition filed July 18, 2012, 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 September 12, 2012, at Waukesha, Wisconsin.

The issue for determination is whether Vyvanse is a drug which may be paid for by the BadgerCare+ Benchmark Plan.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Written submission of
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 was filed with the department on behalf of Petitioner in blank thousand 12 seeking Medicaid payment for Vyvanse.
3. Petitioner has a diagnosis of ADD. The Vyvanse is used to treat that diagnosis. Petitioner has tried the generic form but it upset his stomach and he also broke out in a rash when taking it. He has tried Adderall but with less success. Strattera has not been effective. Focalin works but causes him to lose weight.
4. Petitioner is recipient of Medicaid services via the BadgerCare+ Benchmark program.
5. This prior authorization request was denied as the Benchmark program does not cover name brand pharmaceuticals.

DISCUSSION

The BadgerCare+ program has two major health care benefit plans. These are the Standard and the Benchmark. The Standard plan is available for families with income at or below 200% of the Federal Poverty Level. The Benchmark plan is more limited in terms of the services that it covers than the Standard plan and is for families with income above 200% of the Federal Poverty Level. *BadgerCare+ Eligibility Handbook (BEH), §1.1.1.*

One of the Benchmark plan limitations has to do with drug coverage. It only covers generic drugs. Recipients of Medicaid under the benchmark program are, however, automatically enrolled in the Badger RX Gold plan. This is a separate program administered by Navitus. It provides a discount on the cost of name brand prescription drugs. *BEH, §38.2.1.*

Further, the Department of Health Services online Provider Handbooks make apparent that the Division of Hearings and Appeals does not have authority to make a decision as to noncovered drugs and provides the following detail:

Topic #5717

Drugs for Benchmark and Core Plan Members

Compound drugs are *not* covered under the BadgerCare Plus Benchmark Plan or the BadgerCare Plus Core Plan.

PA is not available for drugs that are not included on the [BadgerCare Plus Benchmark Plan Product List](#), the [BadgerCare Plus Core Plan Product List](#), or the [BadgerCare Plus Core Plan Brand Name Drugs Quick Reference](#). PA requests submitted for noncovered drugs will be returned to the provider. Members do not have appeal rights regarding returned PA requests for noncovered drugs.

Options for Obtaining Necessary Drugs for Benchmark Plan and Core Plan Members

Members who become enrolled in the Benchmark Plan or the Core Plan may need drugs that are not covered by those plans. In some cases, the cost of noncovered drugs may be too high for members to afford. If possible, prescribers should consider switching the member to a generic drug that is covered under the Benchmark Plan or the Core Plan.

Pharmacies may receive a intervention-based service dispensing fee for working with prescribers to find generic equivalents for Benchmark Plan and Core Plan members.

There are several other options available for members whose drug coverage changed because they became enrolled in the Benchmark Plan or the Core Plan. Providers can help members in the following ways:

- Urge members to verify enrollment and eligibility for assistance programs using the following methods:
 - Verify enrollment with the local county or tribal agency.
 - Use [ACCESS](#), an online tool that helps members determine possible enrollment for other state assistance programs.
- Offer members information about prescriptions and drug costs.
 - Check if a prescribed drug is included in the BadgerRx Gold formulary and explain the greater financial responsibility to the member.
 - Dispense a smaller quantity of a drug if a member needs it immediately but cannot afford a full prescription.
- Refer members to [Member Services](#) with questions and concerns about drug coverage.

Found at:

<https://www.forwardhealth.wi.gov/WIPortal/Online%20Handbooks/Display/tabid/152/Default.aspx?ia=1&p=1&sa=48&s=2&c=8&nt=Drugs+for+Benchmark+and+Core+Plan+Members>

Vyvanse is not included on the [BadgerCare Plus Benchmark Plan Product List](#) but is a drug available via the Badger RX Gold plan. See <http://www.badgerxgold.com/badgerxgold>.

Petitioner's mother notes that he has tried virtually all other pharmaceutical options and none work as noted at Finding # 3. Nonetheless, all that can be done here is to direct Petitioner to the Badger RX Gold plan.

CONCLUSIONS OF LAW

That the BadgerCare+ Benchmark Plan does not cover name brand pharmaceuticals and the Division of Hearings and Appeals in is without authority to direct payment for the requested Vyvanse.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 29th day of October, 2012

David D. Fleming
Administrative Law Judge
Division of Hearings and Appeals

c: Division of Health Care Access And Accountability - email
Department of Health Services - email



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 29, 2012.

Division of Health Care Access And Accountability