



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

In the Matter of

[REDACTED]

DECISION

HMO/142670

PRELIMINARY RECITALS

Pursuant to a petition filed July 27, 2012, under Wis. Stat. § 49.45(5)(a), and Wis. Admin. Code § HA 3.03, to review a decision by the Office of the Inspector General in regard to Medical Assistance, a hearing was held on September 17, 2012, at Kenosha, Wisconsin.

The record was held open to allow Petitioner to submit photographs taken by her physician. The photos have been marked as Exhibit 4 and entered into the record.

The issue for determination is whether the Division of Health Care Access and Accountability (DHCAA) correctly denied Petitioner's request for breast reduction surgery.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondents:

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

By: Lucy Miller, RN
Managed Care Nurse Consultant
DHCAA

Independent Health Care (iCare)
1555 RiverCenter Dr. Suite 206
Milwaukee, WI 53212

By: Elizabeth Bartlett, General Counsel

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Kenosha County.
2. On May 29, 2012, the Petitioner, through Aurora Medical Center, requested prior authorization for bilateral breast reduction surgery. (Exhibit 3, pg. 7)
3. On June 4, 2012, iCare sent Petitioner a notice, denying her request for surgery. (Exhibit 3, pg. 21)
4. Within 45 days, Petitioner filed a grievance. (Exhibit 3, pg. 34)
5. On July 17, 2012, the DHCAA sent Petitioner a notice, again denying her request for surgery. (Exhibit 3, pg. 44)
6. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on July 30, 2012. (Exhibit 1)
7. Petitioner complains of neck, shoulder and back pain, headache, shortness of breath upon exertion and numbness in her arms. She also has itchiness under the folds of her breasts. (Petitioner's testimony; Exhibit 3, pg. 9)
8. The Petitioner does not appear to have any postural problems, such as kyphosis, nor does she appear to have shoulder grooving from her bra straps. (Exhibits 1 and 4)
9. The Petitioner is between 4'5" and 5' tall and weighs 161 -171 lbs. (Testimony of Petitioner; Exhibit 3, pg. 10). This gives Petitioner a body-surface area of approximately 1.57 -1.76 square meters. <http://www.bcbst.com/providers/calculator.asp>.
10. The surgeon proposes to remove 400 grams of tissue to address Petitioner's physical discomfort, or 500 grams per breast at Petitioner's election to have A-cup size breasts. (Exhibit 3, pg. 10)
11. Petitioner has not, to date, consulted with a dietician or attempted weight loss under the supervision of her physician. (Petitioner's testimony)
12. Petitioner has not, to date, engaged in any physical therapy program to address her neck, shoulder or back pain. (Petitioner's Testimony)
13. Petitioner has not, to date, consulted with a dermatologist to treat the itching under her breasts.

DISCUSSION

The petitioner requested prior authorization for bilateral breast reduction surgery. To obtain this service she must show the reduction is medically necessary.

A service is medically necessary if it is "[r]equired to prevent, identify or treat a recipient's illness, injury or disability..." A service is not medically necessary if it is provided purely for cosmetic reasons. Wis. Adm. Code § DHS 101.03(96m).

To help determine whether a service is medically necessary, the department has issued guidelines found in the *Prior Authorization Guidelines Manual*. The *Prior Authorization Guidelines Manual*, § 117.006.02, requires ALL of the following for approval of breast reduction surgery:

- 1) Documentation that conservative treatment has been unsuccessful in alleviating clinical symptoms with a trial period of at least 3 month; *and*
- 2) An appropriate amount of breast tissue must be removed from each breast. (Determine by using criteria set forth by P.L. Schnur, MD, et al MS Reduction Mammoplasty: Cosmetic [sic] or Reconstructive Procedure? *Ann Plast Surg* 1991 27:232-237.); *and*

- 3) Documentation of at least 4 medical signs/symptoms of macromastia, such as: postural backache (ICD-0 724.5, 781.9), upper back and neck pain (ICD-9 724.1, 723.1), chronic breast pain due to breasts (ICD-9: 611.71), “true hypertrophy” (ICD -9 611.1), intertrigo (severe and intractable inflammation and/or infection in the fold beneath the breasts) (ICD-9 695.89), shoulder grooving and kyphosis (ICD-9 737.10), gross asymmetry of the breasts or absence of a breast, resulting from resection of the opposite breast due to cancer or infection.)

[Emphasis in original]

The Petitioner has not met her burden to show that the requested breast reduction surgery is medically necessary. First and foremost, Petitioner has not attempted any conservative treatment for a period of three months to address her symptoms of shoulder, neck and back pain or the itching under her breasts. As noted in the findings of fact, Petitioner has not tried to lose weight with the guidance of her physician or a dietician; she has not attempted any physical therapy, nor has she attempted any prescription strength creams to address the itching/rash under her breasts. Second, it is unclear whether the amount of tissue that the surgeon proposes to remove from Petitioner’s breasts is significant enough to indicate medical necessity, under the Schnur criteria, since information concerning Petitioner’s weight and height are not clearly established in the record. What Petitioner reports as her weight and height vary significantly from what is contained in the medical records. Third, Petitioner does not exhibit at least four symptoms of macromastia; she only exhibits two symptoms, those being the neck/back/shoulder pain and itching/rash under her breasts. The medical records do not clearly establish that Petitioner’s shortness of breath, headaches and numbness in her arms are directly attributable to her breast size, nor do the medical records establish that the Petitioner would experience any relief of these symptoms if her breast size were reduced.

Although I understand that Petitioner’s breasts cause her significant discomfort, I must follow the medical assistance program’s rules and uphold the agency’s decision to deny Petitioner’s request for surgery.

CONCLUSIONS OF LAW

The DHCAA correctly denied Petitioner’s request for breast reduction surgery.

THEREFORE, it is

ORDERED

That the petition 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 26th day of September, 2012.

Mayumi M. Ishii
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

David H. Schwarz
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 September 26, 2012.

Division of Health Care Access And Accountability