



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

MPA/142797

PRELIMINARY RECITALS

Pursuant to a petition filed August 1, 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 telephone hearing was held on September 26, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether petitioner is eligible for payment by the MA program for Replete with fiber enteral nutritional product.

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

Written Appearance By: Lynn Radmer, R.Ph.,
Pharmacy Practices Consultant
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County. He is 28 years old and is certified as eligible for MA. He is 60" tall, weighs 105 lbs., and has congenital cerebral palsy, with difficulty swallowing and a history of lactose intolerance. He also has a documented history of being able to consume softened, mashed, or pureed food, or food prepared by blender.

2. In December, 2011, the Department issued a ForwardHealth Update, No. [REDACTED] effective for Prior Authorization Requests made on or after January 15, 2012, directing that to have MA reimbursement for general purpose enteral nutrition products, the individual must have one of the following medical conditions, i.e., a severe swallowing disorder due to oral-pharyngeal tissue injury, trauma, excoriation, (i.e., lesions or mucositis), or defect; or pathology of the gastrointestinal (GI) tract that prevents digestion, absorption, or utilization of nutrients that cannot otherwise be medically managed; or be transitioning from tube feeding (enteral or parenteral) to an oral diet. In addition, several clinical conditions, all of which must be met, including that the medical condition is chronic; adequate nutrition is not possible with dietary adjustment; and a diet of regular or altered consistency table foods (soft or pureed foods) and beverages is not nutritionally sufficient and nutritional requirements can be met only using enteral nutrition products.
3. On June 26, 2012, the petitioner's provider requested prior authorization for MA coverage of Replete with fiber enteral nutritional product, at a cost of \$1,890 per annum for a 12 month supply.
4. In previous years, the Department apparently covered this enteral nutritional product for the petitioner.
5. The petitioner does not have a severe swallowing disorder due to oral-pharyngeal tissue injury, trauma, excoriation or defect; he does not have a pathology of GI tract that prevents digestion, absorption or utilization of nutrients; and he is not transitioning from tube feeding of enteral or parenteral products to an oral diet.
6. The Division denied the prior authorization request on June 27, 2012 because the requested general enteral product is not covered by the MA program under these facts as the petitioner does not have one of the medical conditions required by ForwardHealth Update [REDACTED]

DISCUSSION

The Department may only reimburse providers for medically necessary and appropriate health care services and items listed in Wis. Stat. §§ 49.46(2) and 49.47(6)(a), as implemented by Wis. Admin. Code Ch. DHS 107. Some services, items and equipment are covered if a prior authorization request is submitted and approved by the Department's Division of Health Care Access and Accountability in advance of receiving the service or item. Finally, some services and equipment are never covered by the MA program. The requested Replete with fiber general enteral nutritional product in this case is no longer covered by the MA program per Wis. Admin. Code §DHS 107.10(2)(c), per ForwardHealth Update [REDACTED]. The petitioner and his parents have not demonstrated that he possesses any of the three requisite medical conditions to gain approval of this Request. Accordingly, under the authority stated in Wis. Admin. Code §DHS 107.10(2)(c), the Department has developed a policy identified in the Update, which is a bulletin authorized by the rule for the dissemination of the Department's policy on the reimbursement of enteral products. In essence, the "rules of the game" have changed since the last time the petitioner obtained approval for reimbursement, and reimbursement is no longer available to him under the facts of his condition. The Division was therefore unable to approve the requested service. The instant appeal must be dismissed.

CONCLUSIONS OF LAW

The MA program no longer provide payment as requested by the petitioner because he does not present with one of the medical conditions required by Wis. Admin. Code §DHS 107.10(2)(c) and ForwardHealth Update [REDACTED].

THEREFORE, it is

ORDERED

That the petition for review 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 Madison,
Wisconsin, this 3rd day of October, 2012

Kenneth D. Duren, Assistant Administrator
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 October 3, 2012.

Division of Health Care Access And Accountability