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[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

MPA/143701

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 07, 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 October 01, 2012, at Rhinelander, Wisconsin.

The issue for determination is whether the Department erred in its denial of the

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

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

By: Lora Wiggins, MD (in writing)  
Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Oneida County.

2. Petitioner had chest pain and shortness of breath in the latter half of July 2012. Petitioner has a history of pulmonary embolism.
3. Petitioner visited Dr. Brooks on August 8, 2012. By the time of this visit, petitioner's symptoms had subsided and she was back to her usual activity level. Dr. Brooks ordered a chest CT scan.
4. Petitioner had the scan completed on August 9, 2012. The results were negative for pulmonary embolism.
5. On August 10, the Department faxed a letter to Dr. Brooks indicating the denial of the PA request.
6. Petitioner filed a timely appeal.

### DISCUSSION

By law, MA pays only for medically necessary and appropriate health care services when provided to currently eligible MA recipients. Wis. Admin. Code §§ DHS 107.01(1); See also, Wis. Stat. §§ 49.46(2) & 49.47(6)(a). In order for a service to be "medically necessary" it must meet several specific requirements. See, Wis. Admin. Code § DHS 101.03(96m). One of the specific requirements for "medical necessity" is that the requested service must be required to prevent, identify, or treat a recipient's illness, injury, or disability. Wis. Admin. Code § HFS 101.03(96m)(a). DHCAA denied PA in this case, in part, because there is a lack of documentation supporting the need for the requested CT. Based on the evidence in the record of this matter, I must agree with DHCAA. See also, *ForwardHealth Update*, October 2010, No. 2010-92 ("New Prior Authorization Requirements for Advanced Imaging Services"); and, *ForwardHealth Update*, October 2010, P-1251 ("Update Summary"); see also *MedsSlutions Imaging Guidelines* CH-29 and CH-4 (see exhibit #3).

As noted in the above Findings of Fact, there is not sufficient documentation in the record of this matter to determine if CT is necessary to prevent, identify, or treat petitioner's illness, injury, or disability. Petitioner testified that petitioner had chest pain and that the CT was performed immediately due to a history of pulmonary embolism which was a life threatening possibility. But, the medical documentation shows that the petitioner's episode was two weeks earlier, and that she was back to feeling normal and performing normal activities. She was exhibiting no symptoms at the time. The provider requested approval and, without waiting for approval or denial, scheduled the test. There is nothing in the documentation to indicate that this was an emergency.

Furthermore, under the Wis. Admin Code, a provider must await the approval of the PA before performing the services. See Wis. Admin Code DHS § 106.03(4):

**(4) HEALTH CARE SERVICES REQUIRING PRIOR AUTHORIZATION .** No payment may be made on a claim for service requiring prior authorization if written prior authorization was not requested and received by the provider prior to the date of service delivery, except that claims that would ordinarily be rejected due to lack of the provider's timely receipt of prior authorization may be paid under the following circumstances:

\* \* \*

**(c)** Where time is of the essence in providing a service which requires prior authorization, and verbal authorization is obtained by the provider from

the department's medical consultant or designee. To ensure payment on claims for verbally-authorized services, the provider shall retain records which show the time and date of the authorization and the identity of the individual who gave the authorization, and shall follow-up with a written authorization request form attaching documentation pertinent to the verbal authorization.

The record does not support that this was an emergency. Petitioner was not, at the time of the visit to the physician, or at the time of the test, exhibiting symptoms. More importantly, the documentation submitted with the PA request does not support any emergency or need for immediate evaluation.

Petitioner should note that the Wisconsin Administrative Code makes abundantly clear that the provider is solely responsible for the accuracy and completeness of PA requests. Wis. Admin. Code § DHS 106.02(9)(e)1. When a service must be authorized by DHCAA in order to be covered, the recipient may not be held liable by the certified provider unless the prior authorization was denied by DHCAA and the recipient was informed of the recipient's personal liability before provision of the service. In that case the recipient may request a Fair Hearing. Negligence on the part of the certified provider in the prior authorization process shall not result in recipient liability. Wis. Admin. Code § 104.01(12)(c).

### **CONCLUSIONS OF LAW**

The Department did not err in denying the prior authorization request as the test was performed prior to the Department's decision, and the provider did not establish that there were emergency circumstances.

**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, 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 15th day of October, 2012

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John P. Tedesco  
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 October 15, 2012.

Division of Health Care Access And Accountability