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

In the Matter of

[REDACTED]

DECISION

HMO/143778

PRELIMINARY RECITALS

Pursuant to a petition filed September 10, 2012, under Wis. Stat. § 49.45(5)(a), and Wis. Admin. Code § HA 3.03, 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 02, 2012. The record was held open for 10 days to allow the respondent to provide further documentation. This information was received on October 8, 2012.

The issue for determination is whether the petitioner's Medical Assistance (MA) HMO correctly denied a prior authorization request for gastric bypass surgery.

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: Lucy Miller, Nurse Consultant
Division of Health Care Access And Accountability
Madison, WI

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of La Crosse County.

2. A prior authorization request for gastric bypass surgery was submitted on the petitioner's behalf to her MA/BadgerCare Plus HMO. On August 8, 2012, the HMO issued written notice of the denial of the request. The petitioner timely appealed.
3. The HMO must follow the same standards for gastric bypass surgery approval as are used in "regular" fee-for-service MA. The HMO's basis for denial was that the petitioner did not have a co-morbid medical condition that was refractory to treatment.
4. The petitioner, age 37, has diagnoses of obesity, hyperlipidemia, hypertension, and Diabetes Mellitus. The petitioner has a Body Mass Index of 45.3.

DISCUSSION

The petitioner requests prior authorization for gastric bypass surgery to control her chronic obesity. Medical assistance covers this procedure through the prior authorization process only if there is a medical emergency. See Wis. Stat. § 49.46(2).

I. HISTORY OF APPROVAL GUIDELINES PRIOR TO DECEMBER, 2005.

Before 2001, authorization guidelines for the bypass procedure made approval nearly impossible, because the Division argued that the "medical emergency" requirement meant that the person's weight had to pose an immediate threat to his or her life. It further argued that if this threat did occur, no prior authorization was necessary. This created a procedure that required prior authorization, but could paradoxically only be authorized and paid without prior authorization.

In 2001, the *Prior Authorization Guidelines Manual*, §117.014.02, changed the approval criteria to the following more attainable requirements: (1) The patient must have acceptable operative risks and be able to participate in treatment and long-term follow-up; *and* (2) have either a Body Mass Index (BMI) of at least 40, or BMI from 35-39 plus a high-risk co-morbid medical condition clinically judged to be life-threatening, such as documented sleep apnea, Pickwickian syndrome, obesity-related cardiomyopathy, or severe diabetes mellitus.

Revised guidelines issued in July, 2005, and March, 2009, attempted to address the inconsistency between the 2001 criteria and other code requirements that more cost-effective means be tried first. They list the following approval criteria:

- A.
 1. The BMI is 40 or greater; *or*
 2. The BMI is between 35 and 39 with documented high-risk co-morbid medical conditions that have not responded to medical management and are a threat to life, such as but not limited to: clinically significant obstructive sleep apnea, Pickwickian syndrome, obesity-related cardiomyopathy, coronary heart disease, or medically refractory hypertension.

and
- B. The candidate has previously attempted weight loss without successful long-term weight reduction. These attempts may include ... Documentation should include assessment of the patient's participation and progress throughout the course of the program. ...
- and*
- C. The candidate should receive a pre-operative evaluation by an experienced and knowledgeable multidisciplinary bariatric treatment team ...
- and*
- D. The recipient must be 18 years of age or older and have completed growth.

II. THE PETITIONER DOES NOT SATISFY CURRENT REQUIREMENTS DUE TO LACK OF A COMORBID CONDITION.

The *Prior Authorization Guidelines Manual* was again amended on December 7, 2005, and again in August, 2011. The change was to provision A1, *supra*. That provision now reads:

The member has a body mass index greater than 35 with at least one documented high-risk, life-limiting comorbid medical conditions capable of producing a significant decrease in health status that are demonstrated to be unresponsive to appropriate treatment. There is evidence that significant weight loss can substantially improve the following comorbid conditions:

- Sleep apnea.
- Poorly controlled Diabetes Mellitus while compliant with appropriate medication regimen.
- Poorly controlled hypertension while compliant with appropriate medication regimen.
- Obesity-related cardiomyopathy.

See, *ForwardHealth Update*, No. 2011-44 (August, 2011)

The reason that the Division denied the petitioner's request was that the current authorization guidelines require the documented presence of a life-threatening co-morbid condition that is unresponsive to appropriate treatment. The petitioner cites her diagnoses of Diabetes Mellitus, hyperlipidemia, and hypertension as life-threatening co-morbid conditions. Petitioner's A1c, a measure of petitioner's blood glucose levels of the previous 3 months, was 6. A1c levels at 6 and below are considered normal. Petitioner testified that she is not presently medicated for treatment of the Diabetes Mellitus, such as with Metformin or Insulin. As such, I cannot find that petitioner's Diabetes Mellitus is poorly controlled at this time, nor that this condition is unresponsive to appropriate treatment.

Petitioner's recent blood pressure readings have recently ranged from 125/84 to 152/91, according to petitioner's records. See, Exhibit 4. Medical records submitted by the petitioner note readings as high as 181/107 (in 2009). See, Exhibit 1. Petitioner's records reference high cholesterol readings as well, though I was unable to discern any actual lab results. In any event, petitioner is not presently treating either her hypertension or her hyperlipidemia with medication at this time, opting instead to pursue control of these conditions via a healthier lifestyle and vitamin supplements. Petitioner was prescribed Lisinopril, but did not tolerate that. She was also prescribed a statin drug, but medical records indicate that she does not recall ever taking that. Based on the record before me, I am unable to conclude that her hypertension or her hyperlipidemia are uncontrolled or unresponsive to appropriate treatment

Medical notes from [REDACTED] dated July 13, 2009, state, "I have reviewed with [REDACTED] that gastric bypass surgery may be an option for her, but I am not impressed with the long-term outcome data on the gastric bypass surgery." Exhibit 1. I note that the record before me fails to demonstrate that any of petitioner's diagnoses are life-threatening conditions. This is a sufficient basis for denial of the surgery request. The Division properly applied the current guidelines here, and denied this authorization request. The petitioner may submit a new authorization request if any of her diagnoses worsen and are not improved by treatment.

CONCLUSIONS OF LAW

Petitioner is not currently eligible for MA authorization and payment for gastric bypass 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 served and 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 13th day of November, 2012

Peter McCombs
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 November 13, 2012.

Division of Health Care Access And Accountability