



FH

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

In the Matter of

[REDACTED]

DECISION

MPA/144125

PRELIMINARY RECITALS

Pursuant to a petition filed September 24, 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 (Division or DHCAA) in regard to Medical Assistance (MA), a hearing was held on November 12, 2012, by telephone.

The issue for determination is whether the Division correctly denied a prior authorization request for liposuction in connection skin excision surgery.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By written submission of Paul Mickey, Hearings Coordinator
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Dodge County. She is certified for MA.

2. On August 13, 2012, a prior authorization request (#...184) was submitted on the petitioner's behalf for excision of excess skin from the lower abdomen and upper medical thigh. The authorization request listed only the code for the skin excision procedure, and did not list the code (15879) for liposuction. However, the text of the prior authorization request states:

Given that she has fat as well as redundant skin of the medial thigh, my recommendation would be to do first a liposuction procedure as a first state procedure; this would be done as an outpatient under general anesthesia. I would wait 3 to 6 months later in order for the edema to go down, and then at that point if she has redundant skin would proceed with excision of the redundant skin. ... She is asking that I prior authorize the procedure.

The Division issued written notice on September 4, 2012, approving the skin excision procedure only.

3. The Division's position is that liposuction is not an MA -covered service, primarily because it is viewed as a cosmetic procedure. Cosmetic procedures are not covered by MA.
4. The petitioner, age 48, underwent a gastric bypass procedure in 2001. She went from a weight of 316 pounds to her present weight of 222 pounds. The petitioner has diagnoses of inflammatory bowel disease, thyroid disease, asthma, bipolar disorder, post-traumatic stress disorder, and controlled hypertension. Due to redundant skin in the upper, inner thigh area, she has moisture build-up and persistent vaginal and perineal sores that cause significant physical irritation. See, Exhibit 6, Dr. Aamodt letter. The petitioner has tried using barrier creams in the affected area, with poor results.

DISCUSSION

The MA program pays for a variety of medical services listed in federal and state law, but does not pay for all types of medical services. See, Wis. Stat. § 49.46(2); Wis. Admin. Code § DHS 107.01, *et seq.* with respect to excision of excess skin, the Wisconsin MA program requires that the providing surgeon request prior authorization, which was done here. See, Wis. Admin. Code § DHS 107.02(3). One of the prior authorization criteria is that the procedure must be "medically necessary" to treat the patient's condition. *Id.*, (e)(1). Removal of the excess skin was deemed to be medically necessary, given the petitioner's recurrent problems with sores between her skin folds, and the poor response to more conservative treatment measures for the sores. Thus, authorization was granted for the skin removal at an outpatient surgery center.

The petitioner has appealed because the MA program has not authorized liposuction to remove fat from the upper, inner thigh area as a first step in a two-step process, the second step being the skin removal. The plastic surgeon who submitted the authorization request is very reputable, and I do not doubt that the best possible result will entail the two-step process that he envisions. However, the MA program's position is that the skin removal can occur without the fat removal, and that the result will meet the petitioner's medical need for relief from skin sores. Further, aside from the particulars of this case, the MA program declines to pay for liposuction because it views the procedure as being for cosmetic improvement, rather than medical need.

The petitioner testified that the providing surgeon will not perform the skin removal unless liposuction is also approved. The evidence in this record does not establish *why* fat removal *must* be a pre-condition to removing enough excess skin to alleviate the petitioner's problem with recurring sores in the skin folds. It is not listed as part of the process for removing excess skin in various layman-friendly medical information sources: National Institutes of Health, at <http://www.nlm.nih.gov/medlineplus/ency/article/002985.htm> .. Also, one wonders if the petitioner's excess thigh fat could be adequately reduced if she lost more weight.

Weight loss would be a cheaper option than liposuction, and the MA program favors the use of the most cost-effective means of addressing a need.

CONCLUSIONS OF LAW

1. The Division correctly authorized excision of excess skin for the petitioner.
2. The Division correctly declined to authorize liposuction for the petitioner.

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 4th day of December, 2012

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals



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 December 4, 2012.

Division of Health Care Access And Accountability