



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

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In the Matter of

[REDACTED]

DECISION

MPA/145370

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 16, 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 hearing was held on December 17, 2012, at Marinette, Wisconsin.

The issue for determination is whether the Department erred in its denial of a request for prior authorization for orthopedic shoes.

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: Pamela Hoffman, PT, DPT, MS (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 is a resident of Marinette County.

2. Petitioner's provider, Monroe Bio Technology, submitted prior authorization request # [REDACTED] on October 11, 2012 for orthopedic shoes.
3. The PA was denied on October 25, 2012 with letter to petitioner.
4. Petitioner filed a timely appeal.

### DISCUSSION

Orthopedic or corrective shoes are covered by medical assistance subject to prior authorization if they meet the criteria established in the medical assistance regulations. The Wisconsin Administrative Code § DHS 107.24(2)(c)2 includes within the definition of "orthopedic shoes" the custom-molded shoes sought by petitioner.

Wisconsin Administrative Code § DHS 107.24(4)(f) explains that "[o]rthopedic or corrective shoes or foot orthoses shall be provided only for postsurgery conditions, gross deformities, or when attached to a brace or bar. *These conditions shall be described in the prior authorization request .*" (Emphasis added).

In determining whether to grant prior authorization, the Division must apply the generic prior authorization criteria found at *Wis. Admin. Code* §HFS 107.02(3)(d) and (e). In particular, *Wis. Admin. Code* DHS §107.02(3)(d) provides,

A request for prior authorization submitted to the department or its fiscal agent shall, unless otherwise specified in chs. DHS 101 to 108, identify at a minimum:.... (6) Justification for the provision of the service.

Almost without exception, an applicant will need to demonstrate that the item or piece of equipment for which he or she seeks approval is "medically necessary." An item or service is "medically necessary" if it

(a) [is r]equired to prevent, identify or treat a recipient's illness, injury or disability; and

(b) Meets the following standards:

1. Is consistent with the recipient's symptoms or with prevention,
2. diagnosis or treatment of the recipient's illness, injury or disability;
3. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider and the setting in which the service is provided;
4. Is appropriate with regard to generally accepted standards of medical practice;
5. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
6. Is of proven medical value or usefulness and, consistent with s. HFS 107.035, is not experimental in nature;
7. Is not duplicative with respect to other services being provided to the recipient;
8. Is not solely for the convenience of the recipient, the recipient's family or a provider;
9. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost –

- effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
10. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

*Wis. Admin. Code* § DHS 101.03(96m).

It is petitioner's initial burden to establish that the prior authorization request meets the regulatory requirements at the application level, *Gonwa v. Department of Health and Family Services*, 2003 WI App 152, 668 N.W.2d 122 (Ct.App. 2003) and petitioner has not met that burden. Petitioner's provider failed to address whether the shoes were necessary for postsurgery conditions, gross deformities, or whether they would be attached to a brace or bar. As stated, PA's can only be approved in such circumstances. The PA request provides almost no information about the member and his condition. It is simply inadequate to establish necessity of the item.

### **CONCLUSIONS OF LAW**

The Department did not err in denying the PA request.

**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 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 17th day of December, 2012

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\sJohn 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 December 17, 2012.

Division of Health Care Access And Accountability