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[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

HMO/144578

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 17, 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 hearing was scheduled for 11/19/2012 with Judge John Tedesco. The matter was rescheduled and a telephone hearing was held on January 04, 2013, at Madison, Wisconsin.

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 (CARES # [REDACTED]) is a resident of Dane County.
2. Petitioner is 5'4.75", weighs 396 pounds, and has a body mass index of 66.51 kg/m<sup>2</sup>.
3. UW Hospital and Clinics requested prior authorization for gastric bypass surgery, which was denied by Physician's Plus as noted in correspondence to petitioner dated October 5, 2012.

4. 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 unresponsive to treatment.
5. Petitioner has no emergency comorbid condition that is unresponsive to treatment.

### 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).

In August 2011, the Department issued a major revision of the authorization guidelines for gastric bypass. The latest guidelines reduce the level of obesity required for approval and provide the service to those who have serious health problems that are likely to respond to the surgery and who have been unable to lose weight despite serious efforts that include following plans laid out by a physician. The new approval criteria, which are found in *ForwardHealth Update No. 2011-44*. (August 2011) and went into effect on September 1, 2011, state in their entirety:

The approval criteria for prior authorization (PA) requests for covered bariatric surgery procedures include *all* of the following:

- ✓ 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.
- ✓ The member has been evaluated for adequacy of prior efforts to lose weight. If there have been no or inadequate prior dietary efforts, the member must undergo six months of medically supervised weight reduction program. This is separate from and not satisfied by the dietician counseling required as part of the evaluation for bariatric surgery.
- ✓ The member has been free of illicit drug use and alcohol abuse or dependence for the six months prior to surgery.
- ✓ The member has been obese for at least five years.
- ✓ The member has had medical evaluation from the member’s primary care physician that assessed his or her preoperative condition and surgical risk and found the member to be an appropriate candidate.
- ✓ The member has received a preoperative evaluation by an experienced and knowledgeable multidisciplinary bariatric treatment team composed of health care providers with medical, nutritional, and psychological experience. This evaluation must include, at a minimum:
  - A complete history and physical examination, specifically evaluating for obesity-related comorbidities that would require preoperative management.
  - Evaluation for any correctable endocrinopathy that might contribute to obesity.
  - Psychological or psychiatric evaluation to determine appropriateness for surgery, including an evaluation of the stability of the member in terms of tolerating the operative procedure and postoperative sequelae, as well as the

likelihood of the member participating in an ongoing weight management program following surgery.

- For members receiving active treatment for a psychiatric disorder, an evaluation by his or her treatment provider prior to bariatric surgery. The treatment provider is required to clear the member for bariatric surgery.
  - At least three consecutive months of participation in a weight management program prior to the date of surgery, including dietary counseling, behavioral modification, and supervised exercise, in order to improve surgical outcomes, reduce the potential for surgical complications, and establish the candidate's ability to comply with post-operative medical care and dietary restrictions. A physician's summary letter is not sufficient documentation.
  - Agreement by the member to attend a medically supervised post-operative weight management program for a minimum of six months post surgery for the purpose of ongoing dietary, physical activity, behavioral/psychological, and medical education and monitoring.
- ✓ The member is 18 years of age or older and has completed growth.
  - ✓ The member has not had bariatric surgery before or there is clear evidence of compliance with dietary modification and supervised exercise, including appropriate lifestyle changes, for at least two years.
  - ✓ The bariatric center where the surgery will be performed has been approved by Centers for Medicare and Medicaid Services/American Society for Bariatric Surgery (ASBS) guidelines as a Center of Excellence and meet one of the following requirements:
    - The center has been certified by the American College of Surgeons as a Level 1 Bariatric Surgery Center.
    - The facility has been certified by the ASBS as a Bariatric Surgery Center of Excellence.

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

The Division of Health Care Access and Accountability denied the petitioner's request for a gastric bypass surgery because her one comorbid condition, sleep apnea, could be controlled by using a mask. The petitioner contends that while she tolerates the mask, she still wakes each night at 3 am. However, respondent noted petitioner's medical records document that petitioner was tolerating well the CPAP device being employed to treat petitioner's sleep apnea, resulting in adequate control of petitioner's symptoms. Petitioner did not substantively rebut this contention. She explained that she tolerates the CPAP because she must, and that she is concerned that, absent the procedure, she will not be able to avoid problems such as diabetes, hypertension and cardiac issues. While I do not question the sincerity of her concerns, the established regulations regarding gastric bypass approval do not envision consideration of potential future diagnoses in this regard.

I note that the record before me fails to demonstrate that petitioner's sleep apnea constitutes a life-threatening condition that is not responsive to treatment. There is a sufficient basis for denial of the gastric bypass request. The Division properly applied the current guidelines here, and denied this authorization request. The petitioner may submit a new authorization request if her health condition changes and/or if 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 4th day of February, 2013

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\sPeter 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 February 4, 2013.

Division of Health Care Access And Accountability