



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MPA/145100

PRELIMINARY RECITALS

Pursuant to a petition filed November 06, 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 telephonic hearing was held on December 21, 2012, at Marinette, Wisconsin. At the request of petitioner, a hearing set for November 29, 2012 was rescheduled.

The issue for determination is whether the Department correctly denied the petitioner's prior authorization (PA) request for Medicaid payment for custom molded foot orthotics.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Pamela Hoffman, DPT

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 58 year old resident of Marinette County who is certified for MA.
2. Petitioner is independent with her daily activities, walks in the community, and stands for hours at work. She is diagnosed with posterior tibial tendon dysfunction, ankle and hind foot valgus,

ankle sprain and pronation. However, there is no established gross foot deformity, leg length discrepancy, the need for mismatched shoes or a shoe attached to a brace or bar.

3. On or about September 20, 2012, medical provider, Hanger Prosthetics & Orthotics, requested prior authorization (PA) for Medicaid payment of custom molded foot orthotics for the petitioner at a cost of \$570.00.
4. By a letter dated October 8, 2012, the DHCAA denied the petitioner's PA request because foot orthotics are not a Medicaid covered service for the conditions described in the petitioner's PA request. The Department indicated that foot orthotics for the petitioner's medical condition of painful feet are specifically non-covered Medicaid services per Wis. Admin. Code DHS 107.24(5)(b).

DISCUSSION

The DHCAA may only reimburse providers for medically necessary and appropriate health care services and equipment listed in Wis. Stat., §§ 49.46(2) and 49.47(6)(a), as implemented by the Wisconsin Administrative Code, chapter DHS 107.

The Wisconsin Administrative code provision governing durable medical equipment provides, in relevant part, as follows:

DHS 107.24. Durable Medical Equipment and Supplies . . .

(2) COVERED SERVICES . . . (c) Categories of durable medical equipment. The following are categories of durable medical equipment covered by MA: ...

2. Orthopedic and corrective shoes. These are any shoes attached to a brace for prosthesis
3. Orthoses. These are devices which limit or assist motion of any segment of the human body. They are designed to stabilize a weakened part or correct a structural problem. Examples are arm braces and leg braces....

(4) OTHER LIMITATIONS . . .

(f) Orthopedic or corrective shoes or foot orthoses **shall be provided only for postsurgery conditions, gross foot deformities, or when attached to a brace or a bar**. These conditions shall be described in the prior authorization request

(5) NON-COVERED SERVICES. **The following services are not covered services :**

- (a) Foot orthoses or orthopedic or corrective shoes for the following conditions:
 1. **Flattened arches, regardless of the underlying pathology ;**
 2. Incomplete dislocation or subluxation metatarsalgia with no associated deformities;
 3. Arthritis with no associated deformities; and,
 4. Hypoallergenic conditions....
- (b) **Services denied by Medicare for lack of medical necessity.**

(Emphasis added).

During the December 21, 2012 hearing, after reviewing the Department's reasons for the denial, petitioner was unable to provide any testimony or evidence to refute that the Department correctly denied the petitioner's PA request for foot orthotics. Basically, petitioner admitted that she did not meet the MA criteria for approval of foot orthotics.

Under MA rules orthotics can be covered only for postsurgery conditions or gross foot deformities. Petitioner's condition is not of that type. Department consultant, Ms. Hoffman, correctly confirmed in her initial denial and her November 19, 2012 summary to DHA that the member's painful foot condition are specifically non-covered Medicaid services per DHS 107.24(5)(a)1 and 5(b). There is no exception written into the administrative rules. Accordingly, based upon the above, I must conclude that the Department correctly denied the petitioner's prior authorization (PA) request for Medicaid (ForwardHealth) payment for custom molded foot orthotics.

CONCLUSIONS OF LAW

Petitioner's medical conditions do not meet the criteria for MA approval of custom molded foot orthotics.

THEREFORE, it is

ORDERED

The petition for review herein be and the same is hereby 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 12th day of February, 2013

\sGary M. Wolkstein
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 12, 2013.

Division of Health Care Access And Accountability