



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

MPA/145123

PRELIMINARY RECITALS

Pursuant to a petition filed November 08, 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 07, 2012, at Madison, Wisconsin.

The issue for determination is whether the Department erred in its denial of the prior authorization (# [REDACTED]) for orthodontia.

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: Robert Dwyer, DDS (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 (CARES # [REDACTED]) is a resident of Dane County.

2. Petitioner's provider filed a request for prior authorization for orthodontia on September 24, 2012. The request indicated a diagnosis including "TMD symptoms – muscle pain, headaches."
3. The Department denied the request on September 28, 2012.
4. In a letter dated November 14, the Department indicates that petitioner's Salzman index was 26.

DISCUSSION

Orthodontia is not an MA-covered service. Wis. Adm. Code, §DHS 107.07(4)(j). However, medical services provided to recipients under age 21 pursuant to Early and Periodic Screening, Diagnosis and Treatment (EPSDT) must be covered if the EPSDT health assessment and evaluation indicates that they are needed. 42 C.F.R. §441.56(c); Wis. Adm. Code, §DHS 107.22(4). Prior authorization is granted when the generic authorization criteria at §DHS 107.02(3) are met. Those criteria include the requirement of medical necessity. The DHCAA has defined medical necessity in its policy document, the Prior Authorization Guidelines Manual, page 125.004.03. The Manual requires a Salzman Index score of 30, or the documentation of unusual circumstances that make the recipient's malocclusion handicapping. See also the MA Providers Handbook, Part B, Appendix B118.

The Salzman score is a rating of the person's dental malocclusion, that is, how far from normal occlusion the person's teeth are. Petitioner's Salzman score, as determined by the DHCAA dental consultant, is 29. Extenuating circumstances could be that, despite a low Salzman, the malocclusion causes the person to have unusual difficulty eating or speaking, or the person has documented psychological problems caused by the abnormal occlusion.

There are essentially two means to determine that a request should be granted when the DHCAA determines a Salzman score to be below 30. One way would be to provide evidence and argue that the Salzman score actually is 30 or above. The other way is to provide evidence of extenuating circumstances.

There is no evidence that the DHCAA's determination of the Salzman score was incorrect. Instead, petitioner appears to take the position that his headaches and muscle pain will be relieved by the orthodontic work. But, the original request submitted to the Department did not make this argument or support this position. The original request only stated a diagnosis of "TMD symptoms – muscle pain, headaches." This does not establish medical necessity which is the burden of the provider.

At hearing, petitioner produced a letter from Dr. Koslov which indicated that "it is my assessment that [REDACTED] has tension headaches that are emanating from malocclusion and possibly TMJ dysfunction." This may be a correct assessment. And it may be sufficient for the Department to grant the PA. But this letter was never provided to the Department with the PA request. It was only written and submitted to me for the purposes of the hearing. It is the provider's burden to submit a PA request that meets all requirements of the law and rules and policy. If a provider elects to submit a PA request that it knows does not establish medical necessity of the service, it should not expect an administrative law judge to later conclude that a Department denial was in error. **It is not the job of the Division of Hearings and Appeals to obtain post-denial evidence unavailable to the DHCAA and determine if it fits the approval criteria.**

It may be advantageous for petitioner to request that his provider submit a new request for PA in which the provider endeavors to explain why the work is medically necessary despite the petitioner's Salzman score of 26. Petitioner could also include the letter from Dr. Koslov for the Department to consider. But, the Department did not err in denying the original PA request as that did not support a finding of extenuating circumstances.

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 18th day of January, 2013

\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 January 18, 2013.

Division of Health Care Access And Accountability