



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

MPA/145390

PRELIMINARY RECITALS

Pursuant to a petition filed November 20, 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 ["DCHAA"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on December 17, 2012.

The issue for determination is whether DCHAA was correct to deny PA for MA payment for the drug Marinol (dronabinol) for petitioner.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Lynn Radmer, R.Ph., DCHAA Pharmacy Practices Consultant (Dr. Radmer did not appear at the December 17, 2012 Hearing but submitted a letter dated December 6, 2012 with attachments (Exhibit #2))

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

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (age 23 years; CARES # [REDACTED]) is a resident of Dane County.

2. On October 3, 2012 petitioner's provider, [REDACTED] requested PA (P.A. # 2122774006 dated October 2, 2012) for MA coverage of 4,320 capsules (a 360 day supply; 4 capsules to be taken orally 3 times per day) of the drug Marinol 5 mg at a total cost of \$79,917.09; the active ingredient in Marinol is dronabinol which is a cannabinoid; dronabinol is also a naturally occurring component of marijuana. Exhibit #2.
3. DCHAA denied P.A. # 2122774006 for the Marinol; DCHAA sent a letter to petitioner dated October 16, 2012 and entitled *BadgerCare Plus Notice of Appeal Rights* informing her of the denial. Exhibits #1 & #2.
4. Petitioner is not currently receiving chemotherapy treatment for cancer; petitioner has not been diagnosed with appetite/weight loss caused by HIV or AIDS. Exhibits #1 & #2.

DISCUSSION

As with any eligibility denial, the burden is on petitioner to show that she is eligible for the requested services. *Lavine v. Milne*, 424 U.S. 577, 583-584 (1976). Petitioner has failed to make such a showing.

By law, MA pays only for medically necessary and appropriate health care services when provided to currently eligible MA recipients. Wis. Admin. Code §§ DHS 107.01(1) & 107.17(1) (May 2009); See also, Wis. Stat. §§ 49.46(2) & 49.47(6)(a) (2009-10). In order for a service to be *medically necessary* it must meet several specific requirements. See, Wis. Admin. Code § DHS 101.03(96m) (December 2008).

In determining whether to approve or disapprove a request for PA the limitations imposed by pertinent federal or state statutes, rules, regulations, or interpretations must be considered. Wis. Admin. Code § DHS 107.02(3)(e)9. (May 2009). Written state policy limitations provide that PA for Marinol can be approved only if the MA recipient is currently receiving chemotherapy treatment for cancer or if the MA recipient has not been diagnosed with appetite/weight loss caused by HIV or AIDS. *ForwardHealth Update*; September 2010; No. 2010-84 (page 4). Petitioner does not fall within either of those categories. Petitioner does not dispute this. Therefore, DCHAA's denial must be sustained.

Petitioner argues that she has received Marinol for 5 years¹, that she has been sick her whole life, that Marinol is the only thing that has been effective for her vomiting and nausea, and that Marinol also helps with her depression. She states that she needs Marinol to have any quality of life. Exhibit #1. Likewise, in a letter dated December 14, 2012 petitioner's medical doctor states that Marinol has kept petitioner's nausea under control and that "[s]ince the medication was denied, [petitioner's] nausea has worsened to the point she is unable to eat regularly and she is beginning to lose weight as a result. She has previously been on every antiemetic drug I can think of and the marinol [sic] has been the only medication that has helped." All of this may be correct, but as an Administrative Law Judge ["ALJ"] I must follow the policy limitations explained above.

¹ MA paid for petitioner's prior Marinol when it was approved through the STAT -PA System which is an honor-based telephonic PA system that automatically approves a PA request depending on answers entered by the provider. In the STAT-PA System the provider does not send a copy of the actual PA from and only telephonic answers are recorded in the computer system. In the STAT-PA System the PA is not reviewed by a PA consultant. Exhibit #2 (page 4).

CONCLUSIONS OF LAW

For the reasons discussed above, DCHAA was correct to deny PA for MA payment for the drug Marinol (dronabinol) for petitioner.

NOW, THEREFORE, it is

ORDERED

That 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 22nd day of January, 2013

\sSean P. Maloney
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 22, 2013.

Division of Health Care Access And Accountability