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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

MPA/145776

PRELIMINARY RECITALS

Pursuant to a petition filed December 06, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Office of the Inspector General [“OIG”] in regard to Medical Assistance [“MA”], a Hearing was held via telephone on January 11, 2013.

The issue for determination is whether petitioner is eligible for payment by the MA program for the orthopedic shoes requested in PA # [REDACTED]

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: Pamela J. Hoffman, PT, DPT, MS [Ms. Hoffman did not appear at the January 11, 2013 Hearing, but submitted a letter dated December 13, 2012].

Office of the Inspector General
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 53 years) is a resident of Dane County, Wisconsin.
2. Petitioner has a painful left ankle deformity, chronic pain from osteoarthritis, planter warts, and a broken toe on her right foot.
3. On November 14, 2012 petitioner's provider, University of Wisconsin Hospital & Clinics in Middleton, Wisconsin, requested prior authorization (P.A. # [REDACTED] dated November 14, 2012) for MA coverage of orthopedic shoes for petitioner at a total cost of \$292.00.
4. On November 20, 2012 OIG denied the PA request for orthopedic shoes for petitioner; OIG sent a letter to petitioner dated November 20, 2012 and entitled *BadgerCare Plus Notice of Appeal Rights* informing her of the denial.

DISCUSSION

This is a denial of eligibility for services; it is not discontinuation of services. 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 do so.

The criteria for reimbursement of any shoe (including diabetic shoes) in the MA program are the orthopedic shoe criterion.

Orthopedic or corrective shoes are any shoes attached to a brace or bar for prosthesis; mismatched shoes involving a difference of a full size or more; or shoes that are modified to take into account discrepancy in limb length or a rigid foot deformity. Arch supports are not considered a brace. Examples of orthopedic or corrective shoes are supinator and pronator shoes, surgical shoes for braces, and custom-molded shoes. Wis. Admin. Code § DHS 107.24(2)(c)2. (May 2009).

Orthopedic or corrective shoes or foot orthoses are covered by MA only for postsurgery conditions, gross deformities, or when attached to a brace or bar. These conditions must be described in the PA request. Wis. Admin. Code § DHS 107.24(4)(f) (May 2009). Foot orthoses or orthopedic or corrective shoes are not covered by MA for flattened arches (regardless of the underlying pathology), incomplete dislocation or subluxation metatarsalgia with no associated deformities, arthritis with no associated deformities, or hypoallergenic conditions. Wis. Admin. Code §§ DHS 107.24(5)(a)1.-4. (May 2009).

The information in the record of this matter does not show that petitioner has a diagnosis that meets the criteria necessary for the requested orthopedic shoes to be a covered service.

CONCLUSIONS OF LAW

For the reasons discussed above, petitioner is not eligible for payment by the MA program for the orthopedic shoes requested in PA # [REDACTED]

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 12th day of February, 2013

\sSean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 12, 2013.

Division of Health Care Access And Accountability