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[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

HMO/145962

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 14, 2012, under Wis. Stat. § 49.45(5)(a), and Wis. Admin. Code § HA 3.03, to review a decision by Dean Health Plan ["DHP"], a Health Maintenance Organization ["HMO"] under contract with Medical Assistance ["MA"], a Hearing was held via telephone on January 11, 2013.

The issue for determination is whether it was correct for DHP to deny gastric by-pass surgery to 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: Lucy Miller, Registered Nurse ["RN"], Nurse Consultant  
Division of Health Care Access And Accountability  
1 West Wilson Street  
P.O. Box 309  
Madison, WI 53701-0309

**OTHER PERSON PRESENT:**

Dr. Janet Droessler

**ADMINISTRATIVE LAW JUDGE:**

Sean P. Maloney  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.
2. Petitioner is eligible for MA and is member of DHP HMO.
3. Petitioner requested gastric by-pass surgery from DHP.
4. By a letter dated December 4, 2012 D HP denied petitioner's requested gastric by -pass surgery.
5. Petitioner is approximately 5 feet 4 inches tall, weighs approximately 260 pounds, and has a Body Mass Index ["BMI"] of about 45.

### DISCUSSION

The Wisconsin Department of Health Services ["DHS"] may enter into contracts for MA services with HMOs. Wis. Admin. Code § DHS 104.05(1) (December 2008); see also, Wis. Stat. § 49.45(9) (2011-12). Services available to MA recipients must be identified in the provider's contract with DHS and must be made known to all enrollees. Wis. Admin. Code § DHS 104.05(4) (December 2008). With certain exceptions, all HMOs that contract with DHS must provide to enrollees all MA services that are covered services at the time the MA HMO contract becomes effective. Wis. Admin. Code § DHS 107.28(1)(a)1.intro. (May 2009); See also, Wis. Stat. § 49.46(2) (2011-12).

MA may only reimburse providers for medically necessary and appropriate health care services and equipment listed in sections 49.46(2) and 49.47(6)(a) of the Wisconsin Statutes, as implemented by chapter DHS 107 of the Wisconsin Administrative Code. Some services and equipment are covered if a request is submitted and approved in advance of receiving the service. Some services and equipment are never covered by the MA program.

Section 49.46(2)(f) of the Wisconsin Statutes prohibits payment for gastric by-pass surgery unless it is performed because of a medical emergency as determined by DHS. Wis. Stat. § 49.46(2)(f) (2009-10); See also, Wis. Admin. Code § DHS 107.06(4)(h) (May 2009).

DHS has interpreted the *medical emergency* requirement to include several criteria, one of which is that the person must have at least one documented high-risk, life-limiting comorbid medical condition capable of producing a significant decrease in health status that is demonstrated to be unresponsive to appropriate treatment. *ForwardHealth Update*, August 2011, No. 2011-44, found online at: <https://www.forwardhealth.wi.gov/kw/pdf/2011-44.pdf> . The requested gastric by-pass surgery in this case was denied because petitioner failed to meet this criterion.

Petitioner does not claim to have a documented high-risk, life-limiting comorbid medical condition capable of producing a significant decrease in health status that is demonstrated to be unresponsive to appropriate treatment. Petitioner's medical doctor also did not claim that petitioner has such a condition. Therefore, based on the evidence in the record of this matter, the denial must be upheld.

### CONCLUSIONS OF LAW

For the reasons discussed above, it was correct for DHP to deny gastric by-pass surgery to petitioner.

**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 13th day of February, 2013

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\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](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 13, 2013.

Division of Health Care Access And Accountability