



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

In the Matter of



DECISION

MPA/146243

PRELIMINARY RECITALS

Pursuant to a petition filed December 26, 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 February 12, 2013, at Racine, Wisconsin.

The issue for determination is whether the agency properly denied the Petitioner's Request for Prior Authorization for orthopedic shoes.

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

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

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Racine County.

2. On November 12, 2012, a request for prior authorization (PA) was submitted to the agency by the Petitioner's provider, Hanger Prosthetics, for a diabetic shoe with custom inserts at a cost of \$197.38. The shoes are New Balance 927.
3. The Petitioner's diagnoses include: diabetic neuropathy, sores on the bottom and side of the right first toe due to old fracture in toes.
4. On November 19, 2012, the agency denied the Petitioner's PA request.
5. On December 26, 2012, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

The Wisconsin Administrative Code, §DHS 107.24(5)(c), states that items which are not primarily medical in nature are not covered by MA. Orthopedic shoes are defined at §DHS 107.24(2)(c)2 as "any shoes attached to a brace 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 deformation. 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."

The Department appeared via written summary dated January 4, 2013 with the basis for its decision. The agency notes that the requested shoes are athletic shoes. The agency bases this conclusion on a photocopy of the shoe submitted with the PA request. It notes that the requested shoe does not meet the definition of an orthopedic/diabetic shoes and that it is commonly available in retail stores without a specific medical diagnosis or medical evaluation. It further indicated that the agency could reimburse the provider for dispensing shoes that meet the definition. In addition, the Department seems to assert that the member meets the requirements for orthopedic shoes.

The Petitioner testified that he started getting custom shoes and inserts three years ago. He previously got diabetic boots but found they did not last long. He did research on the shoe that was requested in the PA. He stated that there was a Medicare tag on the shoe and that he was informed that it was a "diabetic" shoe. He further stated that the shoe is identified as a "diabetic shoe" on the New Balance website.

I checked the website and note that it does, in fact, identify the shoe as a "diabetic shoe" and it offers the Medicare code for coverage. I do not know whether, as the Department asserts, this shoe is available in retail stores as an athletic shoe. I disagree that the information from the manufacturer reveals it as an athletic shoes designed for non-medical purposes when the manufacturer website identifies it as a "diabetic shoe."

Since the agency indicates that the member's diagnosis meets the requirements for a diabetic shoe, I have not addressed that issue.

I note, as dicta, that the Department's written summary contains the name of another member on the first page. The remainder of the summary does appear to apply to this Petitioner's particular situation.

I note to the Petitioner that the provider, Hangar Prosthetics, will not receive a copy of this decision. Therefore, in order for it to receive payment for these services, the Petitioner must provide a copy of this decision to Hangar Prosthetics who must submit a new Prior Authorization Request along with this decision to receive payment for the shoes.

CONCLUSIONS OF LAW

The agency did not properly deny the Petitioner's PA request for orthopedic shoes.

THEREFORE, it is

ORDERED

That Petitioner's provider may re-submit the PA request for the New Balance shoes and inserts and its invoice, along with a copy of this decision, to ForwardHealth for payment and ForwardHealth is directed to make payment accordingly.

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 Milwaukee,
Wisconsin, this 13th day of March, 2013

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
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The preceding decision was sent to the following parties on March 13, 2013.

Division of Health Care Access And Accountability



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