



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

MPA/146367

PRELIMINARY RECITALS

Pursuant to a petition filed January 2, 2013, 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 January 23, 2013, at Chippewa Falls, Wisconsin.

The issue for determination is whether the petitioner is entitled to medical assistance reimbursement for Cidofovir to treat growths on his larynx.

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: Lora Wiggins, M.D.

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

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Chippewa County.

2. The petitioner is a 14-year-old boy diagnosed with recurrent laryngeal papillomatosis. These are benign growths that have required surgical removal at least six times since May 2008.
3. On November 14, 2012, the petitioner with his provider, the Marshfield Clinic, requested authorization for a Cidofovir injection to treat his papillomatosis without surgery. The Division of Health Care Access and Accountability denied the request on December 4, 2012.
4. Cidofovir has been approved by the Food and Drug Administration to treat cytomegaloviral retinitis but not to treat laryngeal papillomatosis.
5. The Division of Health Care Access and Accountability conducted a review of the literature and determined that using Cidofovir to treat laryngeal papillomatosis is experimental.

DISCUSSION

The petitioner is a 14-year-old boy who suffers from benign laryngeal papillomatosis that have required surgical removal approximately once a year for the last five years. His physicians are concerned that this frequent surgical intervention will cause permanent damage to his larynx and affect his ability to speak. They propose treating the problem with Cidofovir injections, which are less invasive than surgery.

Medical assistance does not cover services the Department finds experimental after conducting a review pursuant to Wis. Admin. Code, § DHS 107.035. See Wis. Admin. Code, § DHS 107.03(4). Cidofovir has been approved by the Food and Drug Administration to treat cytomegaloviral retinitis but not laryngeal papillomatosis. The Division of Health Care Access and Accountability reviewed the available literature on the drug on behalf of the Department. The only randomized controlled study of the drug found no correlation between its use and a cure for the petitioner's condition. Other literature in the review raised concerns from both physicians and Cidofovir's manufacturer about serious side-effects when the drug is prescribed for uses other than the approved one. These side-effects may include causing cells to become malignant. Based upon this, the Department determined that using Cidofovir to treat laryngeal papillomatosis is experimental, a finding the petitioner's own physician does not challenge. He admits that no randomized, controlled, long-term studies have shown that Cidofovir cures the petitioner's condition and pointed out that one option for the petitioner is to participate in a study of the drug. *Letter dated January 16, 2012, from Victor S. Ejercito, the petitioner's medical doctor, to the petitioner's mother.*

The Wisconsin Administrative Code clearly states that the Department cannot cover services it finds experimental, and nothing in Wis. Admin. Code, § DHS 107.035, grants the Division of Hearings and Appeals authority to reverse the Department's conclusion. The only issue I have authority to determine is whether the Department has in fact found that treatment of the petitioner's condition with Cidofovir is experimental. Because it has, I must find that medical assistance does not cover the service. The rationale behind deferring to the Department's finding was explained by ALJ Brian Schneider in *DHA Decision No. MPA/140827*:

This result only makes sense. The Division of Hearings and Appeals does not have the expertise to review medical treatises and other such documentation to determine if the department's review and determination were correct. It is up to the medical community to convince the department that the service should be removed from the "experimental" designation.

I note to the Department that under Wis. Admin. Code, § DHS 107.035(4), it must review its determination that treating laryngeal papillomatosis with Cidofovir is experimental at least annually.

CONCLUSIONS OF LAW

The Division of Health Care Access and Accountability correctly denied the petitioner's request for Cidofovir to treat Laryngeal papillomatosis because the Department determined that this use of the drug is experimental.

THEREFORE, it is

ORDERED

The petitioner's 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 4th day of February, 2013

\sMichael D. O'Brien
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 February 4, 2013.

Division of Health Care Access And Accountability