



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/147415

PRELIMINARY RECITALS

Pursuant to a petition filed February 14, 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 April 11, 2013, at West Bend, Wisconsin.

The issue for determination is whether the agency properly denied the Petitioner's Request for Prior Authorization (PA) for an MRI of her foot.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Lora Wiggins

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 (CARES # [REDACTED]) is a resident of Washington County.
2. On April 13, 2012, the Petitioner had an X-ray of her left foot related to a calcaneal spur.

3. On December 28, 2012, the Petitioner visited her physician for foot pain. The physician noted soft tissue swelling of the mid-proximal arch of the Petitioner's left foot. The physician noted no joint or foot deformity. The physician recommended an MRI.
4. On January 8, 2013, the Petitioner's provider submitted a PA request to the agency for an MRI.
5. On January 8, 2013, the PA was denied. It is unknown if MedSolutions informed the Petitioner's provider of the denial on this date.
6. On January 9, 2013, the MRI was performed.
7. On February 14, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

The Division began requiring prior authorization for advanced imaging such as MRIs in October 2010 under authority granted by Wis. Admin. Code, § DHS 107.02(3)(a). There are several reasons for requiring prior authorization, the most important of which when evaluating imaging requests are "to safeguard against unnecessary or inappropriate care and service; to safeguard against excess payments;...and to determine if less expensive alternative care, services or supplies are usable..." Wis. Admin. Code, § DHS 107.02(3)(b)1., 2., and 4." The guidelines pertaining to requests for imaging were drafted by MedSolutions, a private radiology benefits manager that claims to use evidence-based clinical guidelines derived from national medical associations. All of the guidelines pertaining to foot problems require an X-ray before any imaging tests to rule out other problems such as fractures and loose material floating around. See MS-30 generally. The guidelines also require four to 6 weeks of conservative care, including nonsteroidal anti-inflammatory agents and analgesics, oral steroids, a physician directed home exercise program or physical therapy prior to considering advanced imaging. MS-30.2.

The Petitioner and her provider have the burden of proving by the preponderance of the credible evidence that the MRI is necessary, and the Division's decision depends upon the information submitted by the provider. There was no X-ray or any information that provided any details about the examination of the petitioner's foot that indicated imaging was immediately necessary. The guidelines are reasonable and I must uphold them. Based upon the evidence, I must uphold the Division's denial.

I note additionally that the Petitioner did not receive the PA denial prior to obtaining the service. It is not clear if the Petitioner's physician received the denial from MedSolutions before the MRI was performed. However, it is the provider's responsibility to obtain prior authorization before a procedure. It is also the provider's responsibility to inform the member of the risk of non-coverage and liability if the PA is not approved.

According to the Petitioner's testimony, she was not given notice by the provider that she could be liable for the cost of the MRI prior to the procedure if the PA was denied. She was not informed that the PA had been denied. If it is accurate that the Petitioner was not informed of her personal liability for the MRI if the PA was denied prior to procedure, she cannot be held liable by the provider for its cost in accordance with the following regulations:

DHS 104.01(12)(2)(c): Prior Authorization of Services. When a service must be prior authorized by the department in order to be covered, the recipient may not be held liable by the certified provider unless the prior authorization was denied by the department and the recipient was informed of the recipient's personal liability before provision of the service. In that case the recipient may request a fair hearing. Negligence on the part of the certified provider in the prior authorization process shall not result in recipient liability.

Wis. Admin. Code § DHS 104.01(12)(2)(c).

DHS 106.03(4) No payment may be made on a claim for service requiring prior authorization if written prior authorization was not requested and received by the provider prior to the date of service delivery. . .

Wis. Admin. Code § DHS 106.03(4).

Based on the evidence and guidelines, the agency properly denied the PA request. Further, if the Petitioner did not receive the denial prior to the service and was not advised of her potential personal liability if the PA was denied, the provider cannot hold the Petitioner liable for the cost of the MRI.

CONCLUSIONS OF LAW

The agency properly denied the PA request.

THEREFORE, it is **ORDERED**

That the petition be, and hereby 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 Milwaukee,
Wisconsin, this 9th day of May, 2013

\sDebra Bursinger
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 May 9, 2013.

Division of Health Care Access And Accountability