



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MSC/147657

PRELIMINARY RECITALS

Pursuant to a petition filed February 26, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Division of Health Care Access And Accountability in regard to Medical Assistance, a hearing was held on March 19, 2013, at Chippewa Falls, Wisconsin.

The issues for determination are whether the SeniorCare program must pay for brand-name drugs for the petitioner and properly refused to pay for a drug whose manufacturer has not entered into a rebate agreement with the Department.

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: Lisa Reese

Division of Health Care Access And Accountability
Madison, WI

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 receives SeniorCare at the 2b level.
3. The petitioner seeks payment for three drugs, Nexium, Lexapro, and Advair Diskus.

4. Nexium and Lexapro are brand-name drugs that have cheaper generic equivalent substitutes.
5. The manufacturer of Advair Diskus has not entered into a rebate agreement with the Department.

DISCUSSION

Senior Care provides prescription drug assistance for eligible Wisconsin residents aged 65 years or older. *See Wis. Admin. Code, Ch. DHS 109.* In order to keep the program's costs reasonable, the program allows the purchase of some brand-name drugs only if the person receives prior authorization in which the provider specifies that the brand name drug is medically necessary and bars the purchase of drugs in which the manufacturer has not entered into a rebate agreement with the Department. *Wis. Admin. Code, §§ DHS 109.31(3)(c)2 and (5)(b).* The petitioner sought payment for Nexium, Lexapro, and Advair Diskus. She said that Nexium was now covered and she believed from communication with representatives of the program that Lexapro would also be. The Division of Health Care Access and Accountability's responses to the petitioner's requests indicate that it has granted her provider's request for both Nexium and Lexapro. The Division also stated that the manufacturer of Advair Diskus has not entered into a rebate agreement and thus it cannot be covered. At the hearing, the petitioner agreed that this drug could not be covered. Thus, it appears that all issues have been resolved.

CONCLUSIONS OF LAW

The Department properly required that the petitioner's provider submit a prior authorization request for Nexium and Lexapro and properly denied coverage of Advair Diskus because its manufacturer had not entered into a rebate agreement with the Department.

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 12th day of April, 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 April 12, 2013.

Division of Health Care Access And Accountability
Enrollment Services
Senior Care