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

In the Matter of

██████ ██████
████████████████████
████████████████████

DECISION

MPA/147812

PRELIMINARY RECITALS

Pursuant to a petition filed March 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 (Division or DHCAA) in regard to Medical Assistance (MA), a hearing was held on March 26, 2013, by telephone.

The issue for determination is whether the Division correctly denied a prior authorization request for orthopedic shoes and over-the-foot orthotics.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

██████ ██████
████████████████████
████████████████████

Respondent:

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

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

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Dane County. He is certified for MA.

2. On January 30, 2013, a prior authorization request was submitted on the petitioner's behalf for orthopedic shoes and over the foot orthotics. The requested items cost \$1,454.74. Following a resubmission, the Division denied the authorization request on February 20, 2013.
3. The Division's basis for denial was that the petitioner's feet do not fit into any of the permissible categories for coverage of orthopedic shoes.
4. The petitioner, age 55, has diagnoses of diabetes Type II with sensory neuropathy, asthma, heart disease, kidney disease, apnea, vascular issues, acid reflux disease, a "back problem" and obesity. He has calluses and skin fissures on both feet.
5. The petitioner is not suffering from a post-surgery condition. His shoes are size 12W (both feet). He does not have differing leg lengths, or a rigid foot deformation. His shoes are not attached to a brace or bar.

DISCUSSION

The Division denied the petitioner's request for orthopedic shoes and foot orthotics. The state Medicaid code language states: states:

(2) COVERED SERVICES.

...

2. Orthopedic or corrective shoes. These are 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.

...

(4) OTHER LIMITATIONS.

...

Orthopedic or corrective shoes or foot orthoses shall be provided only for postsurgery conditions, gross deformities, or when attached to a brace or bar. These conditions shall be described in the prior authorization request.

Wisconsin Administrative Code § DHS 107.24(4)(f)

Medical assistance regulations specifically prohibit coverage of foot orthoses for flattened arches, incomplete dislocation of metatarsalgia, arthritis with no associated deformities, or hypoallergenic conditions. Wis. Adm. Code, § DHS 107.24(5)(a)1.

The petitioner indicated his belief that his shoes sizes may differ by a full size. There was no evidence to support that belief in the prior authorization request. With the petitioner's consent, this Administrative Law Judge telephoned the petitioner's provider, [REDACTED], on May 20 and asked if [REDACTED] had a record of such a shoe size discrepancy. It did not. The petitioner has not established that he suffers from any of the other foot problems identified in the code above. Therefore, denial of his authorization request was correct.

[REDACTED] did indicate that if the petitioner believes that he has different shoe sizes for his two feet, he may go to [REDACTED] to have his feet measured. If he obtains a memo from [REDACTED] declaring such difference in shoe size, he may submit it to me as a Rehearing Request, which is described below.

CONCLUSIONS OF LAW

1. Denial of the requested orthopedic shoes and related orthoses was correct, as the petitioner's condition does not meet the criteria at Wis. Admin. Code § DHS 107.24(2)-(4).

THEREFORE, it is**ORDERED**

That the petition 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 21st day of May, 2013

\sNancy J. Gagnon
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 May 21, 2013.

Division of Health Care Access And Accountability