



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/148101

PRELIMINARY RECITALS

Pursuant to a petition filed March 15, 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 17, 2013, at Siren, Wisconsin.

The issue for determination is whether the petitioner is entitled to medical assistance reimbursement for [REDACTED] if it is not meant to treat nausea related to cancer treatment or AIDS .

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Lynn Radmer, R. Ph.
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 Burnett County.

2. On February 20, 2013, the petitioner with [REDACTED] [REDACTED] [REDACTED] requested a one-year supply of Marinol at a cost of \$11,349. The Division of Health Care Access and Accountability denied her request on March 4, 2013.
3. Marinol's active ingredient is dronabinol, a synthetic form of delta-9-THC used to treat nausea.
4. The petitioner is a 10-year-old girl who had a stroke and has vasculitis, Her vasculitis is treated with mycophenolate mofetil, which has caused nausea, vomiting, and loss of weight.
5. The petitioner lost five pounds from January through the beginning of March 2013 after she stopped taking Merinol. She had been maintaining and increasing her weight while on Merinol.
6. Merinol's manufacturer indicated that the drug is meant to treat HIV/AIDS patients with anorexia or cancer patients experiencing nausea or vomiting associated with chemotherapy. It does not contend that it should be used to treat nausea caused by other drugs or conditions. The Department has determined that all uses other than treatment of HIV/AIDS patients with anorexia or cancer patients experiencing nausea or vomiting associated with chemotherapy is experimental.

DISCUSSION

The petitioner is a 10-year-old girl who requests authorization under Wis. Admin. Code, § DHS 107.10(2) for Marinol to treat her nausea, vomiting, and weight loss associated with the drug she takes for vasculitis. Marinol is the brand name for the drug whose active ingredient is dronabinol, a synthetic form of delta-9-THC. Her treatment for vasculitis began after she had a stroke.

Medical assistance only covers a requested treatment if the recipient proves that it is medically necessary, effective, and appropriate. Wis. Admin. Code § DHS 107.02(3)(e). A treatment is not medically necessary if it is "experimental." Wis. Admin. Code, § DHS 101.03(96m)(b)5; *see also* Wis. Admin. Code, § DHS 107.03(4). A treatment is experimental if the Department, after a review, determines it is not "a proven and effective treatment for which it is intended or used." Wis. Admin. Code, § DHS 107.0035(2). The Department's review looks at the following:

- (a) The current and historical judgment of the medical community as evidenced by medical research, studies, journals or treatises;
- (b) The extent to which medicare and private health insurers recognize and provide coverage for the service;
- (c) The current judgment of experts and specialists in the medical specialty area or areas in which the service is applicable or used; and
- (d) The judgment of the MA medical audit committee of the state medical society of Wisconsin or the judgment of any other committee which may be under contract with the department to perform health care services review within the meaning of s. [146.37](#), Stats.

The Department has determined that dronabinol is experimental unless it is for HIV/AIDS patients with anorexia or cancer patients experiencing nausea or vomiting because of chemotherapy. Cancer patients must also demonstrate that they have not responded adequately to conventional antiemetic treatments. This finding is consistent with the manufacturer's description of the drug, which indicates that it has only been tested for these two classes of patients. That description indicates that "Merinol should be used with caution in children because it has not been studied in children." 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 can determine is whether the Department has in fact found that treatment of the petitioner's nausea with Merinol is experimental. 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.

The petitioner and her provider contend that although she does not receive chemotherapy, the drugs she has taken since suffering a stroke affect her appetite in same way chemotherapy drugs do and that she takes Merinol for the same reason as those taking it for an approved use do: to prevent nausea and improve her appetite. They point out that she gained weight while taking Merinol and lost five pounds in the two months after she stopped taking it. The testimony also indicated that she cannot take substitute drugs to increase her appetite. These arguments are compelling. Nevertheless, Merinol has not been approved to treat general nausea or appetite problems, or even those related to nausea caused by prescription medication. Its manufacturer has sought approval for only the two populations already discussed. The petitioner does not have cancer or AIDS, and the drug she takes for her vasculitis, mycophenolate mofetil, affects her appetite, but it is not a chemotherapy drug. Based upon this, I must find that regardless of how much good Merinol does her, I lack the authority to overturn the Division's finding that it is experimental for the requested use. Therefore, the Division's denial is upheld.

CONCLUSIONS OF LAW

The Division of Health Care Access and Accountability correctly denied the petitioner's request for Merinol because its use to treat the petitioner's condition 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 14th day of May, 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 May 14, 2013.

Division of Health Care Access And Accountability