



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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██████████ ██████████
██

DECISION

MNP/148186

PRELIMINARY RECITALS

Pursuant to a petition filed March 15, 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 telephone hearing was held on May 06, 2013.

The issue for determination is whether the respondent correctly covered petitioner's cost of her Lexapro prescription at the generic equivalent rate.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Respondent:

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

Written Appearance by: Lisa Reese
Division of Health Care Access And Accountability
Madison, WI

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Oconto County.
2. A Lexapro prescription filled at the Walgreens Pharmacy in Green Bay, WI, was reimbursed by the MA program on December 10, 2010 at the generic rate. The rationale for payment of the generic rate is that the prescription was filled without submission of a "Brand Medically

Necessary prior authorization request for the more expensive brand-name drug, where a generic drug was available. Exhibit 2.

3. The MA program paid claims for the generic equivalent of Lexapro on January 9, 2013, February 6, 2013, and March 8, 2013.
4. The petitioner has historically developed seizure-like symptoms with the use of the generic equivalent of Lexapro. When the petitioner filled her Lexapro prescription on December 10, 2012, prior authorization documentation from her physician declaring that the brand name drug was medically necessary was not filed.

DISCUSSION

The petitioner contests the Department's decision to make a generic-equivalent payment for the filling of a brand-name Lexapro prescription. The Department provided the following explanation for its actions:

Lexapro is a brand-name medication that requires Brand Medically Necessary prior authorization for dates of service on or after December 1, 2012. Prior to December 1, 2012, authorization for dates of service on or after December 1, 2012. Prior to December 1, 2012, Lexapro was not included in the limited list of covered brand drugs for the BadgerCare Plus Core Plan, unless the member was transitioned from a General Assistance Medical Program. [Petitioner] was a transitioned member, therefore Lexapro was covered without prior authorization until December 1, 2012. After December 2012, a prior authorization is required. ... Review of the prior authorization file confirmed there is no record of an approved prior authorization for Lexapro. If [petitioner's] prescriber believes the brand name is medically necessary, he or she may submit the appropriate paperwork to ForwardHealth to request a Brand Medically Necessary prior authorization. This request is submitted by the pharmacy and includes a Prior Authorization/Brand Medically Necessary Attachment form completed by the prescriber. The prescriber is required to document why it is medically necessary for [petitioner] to receive the brand name drug. Criteria includes documented treatment failure with generic equivalent drug(s), clinically adverse drug or allergic reactions to the generic equivalent or a documented medical condition that causes a contraindication to use the generic equivalent.

Exhibit 2.

In support of its argument that a "brand medically necessary" prior authorization is required, the respondent relies on 42 CFR §§447.331 & 447.332. Federal rule §447.332 directs CMS (the federal MA agency) to establish a list of "multiple source"/generic drugs which form the basis for payment levels by the MA program. There is no dispute that Lexapro is on this generic drug list. To deviate from the federal generic drug list, the exception requirements at §447.331 must be met:

§447.331 Drugs: Aggregate upper limits of payment.

...

(c) *Certification of brand name drugs.* (1) The upper limit for payment for multiple source drugs for which a specific limit has been established under §447.332 does not apply if a physician certifies in his or her own handwriting that a specific brand is medically necessary for a particular recipient.

(2) The agency must decide what certification form and procedure are used.

The respondent asserts that effective December 1, 2012, Lexapro was added to the list of brand name medications that require Brand Medically Necessary prior authorization.

In reviewing the Wisconsin state code provisions relating to MA provision of drugs, there is legal authority that supports the DHCF's position herein:

DHS 107.10 Drugs. ...

(3) OTHER LIMITATIONS. ...

(c) Generically-written prescriptions for drugs listed in the federal food and drug administration approved drug products publication shall be filled with a generic drug included in that list. Prescription orders written for brand name drugs which have a lower cost commonly available generic drug equivalent shall be filled with the lower cost drug product equivalent, unless the prescribing provider under sub. (1) writes "brand medically necessary" on the face of the prescription.

Wis. Admin. Code §HFS 107.10(3)(c). The state code requires the physician to use the mandatory three-word phrase, "brand medically necessary," for the drug in question here. A state code provision carries the force of law. Thus, I have no ability to deviate from the code's directive here, and the denial of this prescription payment must be affirmed. Because this determination decides the case, I need not discuss whether the brand name drug was actually medically necessary for this client.

I note to the petitioner that neither her provider nor her pharmacy will receive a copy of this decision. In order to pursue coverage of the brand name prescription, it is incumbent on her to provide a copy of this decision to her provider and her pharmacy, and request that they submit a request for the prior authorization of the Lexapro drug, with supporting documentation of the necessity of the brand name drug, as opposed to the generic equivalent.

CONCLUSIONS OF LAW

In accord with Wis. Admin. Code §DHS 107.10(3)(c), the respondent correctly provided generic-equivalent reimbursement for a prescription for the brand name drug Lexapro, because the prescribing physician did not request "brand medically necessary" prior authorization.

NOW, THEREFORE, it is ORDERED

That the petition herein be 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 29th day of May, 2013

\sPeter McCombs
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 29, 2013.

Division of Health Care Access And Accountability