FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

MPA/148486

PRELIMINARY RECITALS

Pursuant to a petition filed April 02, 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 ["DCHAA"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on May 21, 2013.

The issue for determination is DHCAA was correct not to approve reimbursement by MA for the comprehensive orthodontic treatment and periodic orthodontic treatment visits requested in PA # [redacted].

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[redacted] (not present at May 21, 2013 Hearing)
[redacted]

Represented by:

[redacted], petitioner's parents
[redacted]

Respondent:

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

By: Robert Dwyer, DDS, DCHAA Dental Consultant [Dr. Dwyer did not appear at May 21, 2013 Hearing, but submitted a letter dated April 8, 2013 with attachments. (Exhibit #2)]

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

ADMINISTRATIVE LAW JUDGE:
Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (age 11 years) is a resident of Brown County.
2. Petitioner's provider, Dental Associates of Sturtevant, Wisconsin, provided comprehensive orthodontic treatment and periodic orthodontic treatment visits beginning on July 5, 2011.
3. Petitioner's provider, Dental Associates of Sturtevant, Wisconsin, filed a Prior Authorization Request Form ["PARF"] (PA # [redacted]) dated January 18, 2013 with DCHAA requesting PA for MA payment for comprehensive orthodontic treatment and periodic orthodontic treatment visits for petitioner at a total cost of $5,966.00. Exhibit #2.
4. DHCAA denied PA # [redacted] because it was not submitted in a timely manner. Exhibit #1 & #2.

DISCUSSION

Both the Wisconsin Administrative Code and written policy are very clear, in several places, that, if PA is not requested and obtained before a service requiring PA is provided, reimbursement shall not be made. Wis. Admin. Code § DHS 107.02(3)(c) (May 2009); See also, Wis. Admin. Code §§ DHS 106.03(4)(intro.) (August 2010), 107.02(2)(h) & 107.03(9) (May 2009), *WMAP Provider Handbook* (WMAP Handbook) Part A Section VIII-C (page A8-001; issued 07/93) & Part A Appendix 15, #2 (page A11-041 #2; issued 12/92); additionally see, Wis. Admin. Code §§ DHS 107.02(1)(a), 107.02(2)(intro.), 107.02(2)(a), 107.02(3)(e)9. & 107.02(3)(i)2.c. (May 2009). It follows that DHCAA was correct not to approve PA in this case.

The Wisconsin Administrative Code does allow several exceptions to the requirement that PA must be requested and obtained before a service requiring PA is provided. First, reimbursement may be made in extraordinary circumstances such as emergency cases where the department has given verbal authorization for the service. Wis. Admin. Code §§ DHS 107.02(3)(c) & 107.03(9) (May 2009). Additionally, reimbursement may be made in the following three circumstances: (1) if a denial of PA is rescinded in writing by DHCAA or overruled by an administrative or judicial order; (2) where the service was provided before the recipient became eligible for MA and the provider applies to and receives from DHCAA retroactive authorization for the service; and, (3) where time is of the essence in providing a service which requires PA, and verbal authorization is obtained by the provider from DHCAA's medical consultant or designee. Wis. Admin. Code § DHS 106.03(4) (August 2010); See also, WMAP Handbook Part A Section VIII-C (page A8-001; issued 07/93) & Part A Appendix 15 (page A11-041 #2; issued 12/92).

To ensure payments for claims for verbally authorized services, the provider must retain records which show the time and date of the authorization and the identity of the individual who gave the authorization, and must follow-up with a written authorization request form attaching documentation pertinent to the verbal authorization. Wis. Admin. Code § DHS 106.03(4)(c) (August 2010). Verbal authorization is only allowed in extraordinary circumstances such as emergency cases or where time is of the essence in

providing a service. Wis. Admin. Code §§ DHS 107.02(3)(c) & 107.03(9) (May 2009); Wis. Admin. Code § DHS 106.03(4) (August 2010).

Petitioner does not claim that she meets any of the above exceptions.

In addition to the exceptions allowed by the Wisconsin Administrative Code (discussed above), DHCAA written policy allows for backdating of a PA in some circumstances as follows:

"In general, the grant date for prior authorization requests is the date of adjudication of a request by the analyst or consultant. Where the service is identified as urgent in character, backdating to the date the request is received at EDS may be appropriate. In cases where the prior authorization was returned once, or several times, the request may be backdated to the original date the request was first received at EDS. When an earlier prior authorization was denied and a new prior authorization request is submitted with information to justify approval, backdating may be allowed to the first EDS receipt date of the original denied prior authorization request."

WMAP Handbook Part A Section VIII-F (page A8-005; issued 07/93).

All of these written policy exceptions grant backdating only to the date of receipt of a PARF. In this case PA # [redacted] was received by DHCAA on sometime in January 2013 -- after the date the comprehensive orthodontic treatment and periodic orthodontic treatment visits were provided to petitioner. Thus, none of these exceptions could be construed to provide coverage for the services petitioner received.

Petitioner's parents testified that, prior to services being provided, they informed the provider that they had BadgerCare (a form of MA).

Petitioner should note that the Wisconsin Administrative Code makes abundantly clear that the provider is solely responsible for the timeliness of PA requests. Wis. Admin. Code § DHS 106.02(9)(e)1. (August 2010). When a service must be authorized by DHCAA in order to be covered, the recipient may not be held liable by the certified provider unless the PA was denied by DHCAA 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 PA process shall not result in recipient liability. Wis. Admin. Code § DHS104.01(12)(c) (December 2008).[1]

DHCAA written policy states as follows:

"**Provider Responsibility**
Providers are solely responsible for obtaining prior authorization. If a provider renders a service which requires prior authorization without first obtaining that authorization, the provider is responsible for the cost of the service and will not be reimbursed for the service through the WMAP, except in the case of provider or recipient retroactive eligibility."

WMAP Handbook Part A Section VIII-C (page A8-001; issued 07/93) (**bold** in original).

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[1] For example, if a provider does not inform a recipient that a procedure or service requires PA, and performs the service before submitting a PA request or receiving an approval and then submits a claim for services rendered which is rejected, the recipient may not be held liable. Wis. Admin. Code § DHS104.01(12)(c) (December 2008)Note.

"Providers are solely responsible for obtaining prior authorization, before the delivery of service. The provider may not bill the recipient because of his/her failure to seek prior authorization.

If a provider renders a service which requires prior authorization, without first obtaining authorization, the provider is responsible for the cost of the service. ***NOTE:*** Exceptions are the provision of services that require prior authorization, but were performed without prior authorization as an emergency service, and in cases of provider/recipient retroactive eligibility."

WMAP Handbook Part A, Appendix 15 (page A11-041 #2; issued 12/92) (underline and ***bold italics*** in original)

CONCLUSIONS OF LAW

For the reasons explained above, DHCAA was correct not to approve reimbursement by MA for the comprehensive orthodontic treatment and periodic orthodontic treatment visits requested in PA # [redacted].

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby 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 30th day of May, 2013

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\sSean P. Maloney
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 30, 2013.

Division of Health Care Access And Accountability