



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

HMO/148666

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 10, 2013, under Wis. Stat. § 49.45(5)(a), 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 June 04, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the petitioner's MA HMO correctly denied payment of petitioner's co-pays for physician visits while he was hospitalized.

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: Lucy Miller, Nurse Consultant  
1 W. Wilson St.  
PO Box 309  
Madison, WI 53701-0309

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County.
2. In October 2012 petitioner was hospitalized for a surgery. At that time he was enrolled in MA's BadgerCare Plus Benchmark Plan. His HMO was United Health Care (UHC).

3. After the surgery, petitioner received bills from physicians for co-pays for their visits during his hospitalization.
4. Petitioner requested that the UHC pay for those co-pays, but the UHC denied petitioner those payments.

### DISCUSSION

Under the discretion allowed by Wis. Stat. §49.45(9), the Department of Health Services (DHS) now requires MA recipients to participate in HMOs. Wis. Adm. Code, §DHS 104.05(2)(a). MA recipients enrolled in HMOs must receive medical services from the HMOs' providers, except for referrals or emergencies. Wis. Adm. Code §DHS 104.05(3). The criteria for approval by a managed care program contracted with the DHS are the same as the general MA criteria. See Wis. Adm. Code, §DHS 104.05(3), which states that HMO enrollees shall obtain services "paid for by MA" from the HMO's providers. The DHS must contract with the HMO concerning the specifics of the plan and coverage. See Wis. Adm. Code, §DHS 104.05(1) and see The 2012-2013 Contract at <https://www.forwardhealth.wi.gov/WIPortal/Tab/42/icscontent/Managed%20Care%20Organization/Providers/providerContracts.htm.spage>; see also in part, Respondent's Attachment 1.

The issue in this case is whether or not the HMO was correct in denying payment of co-pays for petitioner's physician visits during his hospitalization. In the Contract, at page 90, it states that the HMO and its providers and subcontractors must not bill a BadgerCare Plus member for medically necessary covered services except for allowable copayments for covered services during his enrollment. A Medicaid Update issued in January 2008 explained the BadgerCare Plus Benchmark Plan covers doctors' visits and hospital stays and that copayments are higher than in the Standard Plan. See, Respondent's Attachment 4; also available at <http://www.dhs.wisconsin.gov/em/CustomHelp/updates/pdf/phc1400.pdf>. The agency also provided the "Badgercare Plus and Wisconsin Medicaid covered services comparison chart" showing that covered services are fully covered but that there is a \$15 copayment per visit. See, Respondent's Attachment 4; also available at <https://www.forwardhealth.wi.gov/WIPortal/content/Provider/Medicaid/Content/Managed%20Care%20Organization/providers/BCPlusCoveredSrvcsComparisonChart.pdf.spage>. The agency also provided the BadgerCare Plus and MA Physician Handbook again stating that copayments under the Benchmark Plan are \$15 per visit, including when in the hospital. See, Respondent's Attachment 4; see also <https://www.forwardhealth.wi.gov/WIPortal/Online%20Handbooks/Display/tabid/152/Default.aspx?ia=1&p=1&sa=50&s=5&c=32>. This also provides that the only persons exempted from the copayment are members under 18 years old who are members of a federally recognized tribe and pregnant women. Id. It also states that federal law permits states to charge members a copayment for certain covered services. See Deficit Reduction Act of 2005 (DRA)(Public Law 109-171), §§6041, 6042, and 6043 and Wis. Stat. §49.45(18).

If the member disagrees with any aspect of service delivery provided or arranged by the HMO, the recipient may file a grievance with the DHS or appeal to the Division of Hearings and Appeals. Wis. Stat., §49.45(5). That is what occurred here when the DHS denied petitioner's request for payment of those copayments. Based on all of the documentation and testimony at the hearing, I find that the HMO decision to deny payment of the co-pays was justified. Petitioner's argument was that the HMO told him his hospitalization would be covered 100% and thus he relied on that statement to believe he would not have to pay the copays he is now being charged with. He believed he would just have to pay the \$100 copay assessed for inpatient hospital services. Petitioner's argument is an equitable one. It is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. Thus, given the state's

statutory authority to contract with the HMO and to charge copayments for covered services, one of which is clearly outlined as physician services, I must find the agency acted correctly here.

**CONCLUSIONS OF LAW**

The petitioner's MA HMO correctly denied payment of petitioner's co-pays for physician visits while he was hospitalized.

**THEREFORE, it is ORDERED**

That the petition for review 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 Milwaukee,  
Wisconsin, this 3rd day of July, 2013

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\sKelly Cochrane  
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 July 3, 2013.

Division of Health Care Access And Accountability