



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/148913

PRELIMINARY RECITALS

Pursuant to a petition filed April 19, 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 June 06, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly denied the Petitioner's Request for Prior Authorization (PA) for a lap gastric bypass procedure.

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: Richard Carr

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

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.

2. The Petitioner has comorbidities that include diabetes, degenerative joint disease, GERD, respiratory insufficiency, depression, chronic low back pain, right ankle ligamentous injuries and hypertension.
3. On July 12, 2012, the Petitioner weight was 256.9 pounds and her BMI was 46.9. On February 21, 2013, her weight was 246 pounds and her BMI was 45.07.
4. On March 22, 2013, the Petitioner had an initial consultation. Medications were noted to be Actos, Lisinopril, Trazadone, Wellbutrin, Ibuprofen, and Vesicare. Blood pressure was noted to be 140/90. A progress note dated March 26, 2013 noted the Petitioner's BMI as 41.5.
5. On March 26, 2013, the Petitioner's provider, Wisconsin Bariatrics, submitted a PA request on behalf of the Petitioner requesting lap gastric bypass at a cost of \$12,370.
6. On April 16, 2013, the agency denied the Petitioner's request.
7. On April 19, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.
8. On June 11, 2013, the Petitioner had a physician visit. Her blood pressure reading was 146/100. Her weight is 246 pounds.

DISCUSSION

Wis. Stat., §49.46(2)(f) provides as follows concerning MA benefits: "Benefits under this subsection may not include payment for gastric bypass surgery or gastric stapling surgery unless it is performed because of a medical emergency."

The criteria for approval of a gastric bypass, as of September 1, 2011, are as follows:

The approval criteria for PA requests for covered bariatric surgery procedures include ... the following:

The member has a body mass index greater than 35 with at least one documented high-risk, life-limiting comorbid medical conditions capable of producing a significant decrease in health status that are demonstrated to be unresponsive to appropriate treatment. There is evidence that significant weight loss can substantially improve the following comorbid conditions:

- Sleep apnea.
- Poorly controlled Diabetes Mellitus while compliant with appropriate medication regimen.
- Poorly controlled hypertension while compliant with appropriate medication regimen.
- Obesity-related cardiomyopathy.

ForwardHealth Update, No. 2011-44, effective September 1, 2011. There also must be documented prior attempts to lose weight, three months participation in a weight loss program, and medical and psychological evaluations to determine if the person is an appropriate candidate for such surgery.

The use of the Department's periodic Updates to set MA coverage guidelines is approved by law. See, Wis. Admin. Code, §DHS 108.02(4). The criteria at issue here were drafted because of the mandate that gastric bypass is limited to medical emergencies. Wis. Admin. Code, §DHS 107.06(4)(h).

The prior authorization request included no information on the specifics of petitioner's diabetes and hypertension other than one blood pressure reading. The information submitted after the hearing

contained another blood pressure reading. Medical records submitted indicate that the Petitioner's diabetes and hypertension are adequately controlled with medication. The records also indicate that, in the previous year, the Petitioner has adopted a better diet, lost some weight and lowered her BMI. The records also indicate that she is compliant with taking her medications to control hypertension, diabetes, and asthma.

The agency concluded that the Petitioner does not meet the criteria for approval of the gastric bypass surgery because there is no emergency or high-risk, life-limiting comorbid medical condition. Because state law requires a medical emergency and there is no evidence of such an emergency in the Petitioner's records, I must conclude that the agency correctly denied the requested surgery.

CONCLUSIONS OF LAW

The agency properly denied the Petitioner's PA request for gastric bypass surgery.

THEREFORE, it is **ORDERED**

That the petition be, and hereby 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 Milwaukee,
Wisconsin, this 8th day of July, 2013

\sDebra Bursinger
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 8, 2013.

Division of Health Care Access And Accountability