



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/148948

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 22, 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 May 14, 2013, at Milwaukee, Wisconsin. The record was held open to give Petitioner's provider(s) an opportunity to submit additional information in response to the agency response, Exhibit # 3. Nothing was received.

The issue for determination is whether the Division correctly denied a prior authorization request for Ensure Plus for the Petitioner.

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: 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:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County.
2. A prior authorization request seeking Wisconsin Medicaid payment for Ensure Plus was filed on behalf of Petitioner by her provider, Home Care Medical, on or about March 7, 2013. The request was for 3 cans of the Ensure Plus per day for a year. The cost was noted to be \$2430.00.

3. Ensure Plus is a commercially prepared enteral nutritional supplement/replacement food product.
4. The prior authorization request noted at Finding # 2 was denied. The Division's basis for denial was the request did not satisfy Medicaid guidelines for approval. Medicaid does not pay for ordinary food. The Medicaid program will only cover enteral nutrition products if the patient has been diagnosed with one of the following medical conditions:
  - a severe swallowing disorder due to oral-pharyngeal tissue injury, lesions or defect,
  - pathology of the gastrointestinal tract that prevents digestion, absorption or utilization of the nutrients that cannot otherwise be medically managed or
  - transitioning from use of the feeding tube to an oral diet.
5. Petitioner is 54 years of age (██████/1959). Her diagnoses include tardive dyskinesia [*Tardive dyskinesia is a disorder that involves involuntary movements, especially of the lower face. Tardive means "delayed" and dyskinesia means "abnormal movement."*] and jaw dystonia [*muscles contract involuntarily — causing uncontrollable repetitive or twisting movements of the affected body part*]. Her medical records indicate that her height is 61 inches and her weight 116 pounds giving her a body mass index of 22.7 at the time of submission of this PA [*normal range is 18.5 to 24.9*]. All bracketed descriptions are from <http://www.nlm.nih.gov/medlineplus>. Petitioner's weight had dropped to 102 by the time of the hearing though this still leaves her BMI at 19.3.

### DISCUSSION

Medically necessary food replacement enteral and parenteral products can be a Medicaid covered service but are subject to prior authorization. *Wis. Admin. Code §DHS 107.10(1),(2)(c)*. Ensure Plus is a high calorie food replacement product. The Code only allows for Medicaid coverage of such a product if it is medically necessary and used for the treatment of severe health conditions, such as pathologies of the gastrointestinal tract or metabolic disorders. Additionally, as with all prior authorizations, the item or service must pass the generic prior authorization criteria found at §107.02(3)(e), which include the requirements that the item be medically necessary, appropriate, and cost effective.

The standards necessary for approval of the request here are quite specific. There is nothing in the record here to indicate that Petitioner has an oral pharyngeal tissue injury, or defect; pathology of the gastrointestinal tract preventing digestion or is transitioning from tube feeding to an oral diet.

And it is also worth noting that the Department makes a number of suggestions as to other nutritional sources that are readily available in grocery stores. It does not appear that these have been tried for Petitioner as of the date of this prior authorization request and subsequent denial. Examples include Carnation Instant Breakfast powder product which, with 1 cup of whole milk, would provide Petitioner with about 340 calories per cup and ordinary whole chocolate milk which provides 210 calories per cup (Ensure Plus is 350 cal/container).

### CONCLUSIONS OF LAW

That the evidence offered on behalf of Petitioner is not sufficient to demonstrate that this request for Medicaid payment for Ensure Plus meets the standards necessary for approval.

**THEREFORE, it is**

**ORDERED**

That this 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 Milwaukee,  
Wisconsin, this 11th day of July, 2013

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\sDavid D. Fleming  
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 11, 2013.

Division of Health Care Access And Accountability