



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

DECISION

MPA/149243

PRELIMINARY RECITALS

Pursuant to a petition filed May 06, 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 June 20, 2013. The Hearing in this matter was held at the same time as the Hearing for the following closely related matter concerning the same petitioner: MPA-149243.

The issue for determination is whether DHCAA was correct to deny Prior Authorization ["PA"] (P.A. # [Redacted]) for reshaping bone orthognathic osteotomy for petitioner.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted] (not present at June 20, 2013 Hearing)
c/o [Redacted]
[Redacted]
[Redacted]

Represented by:

[Redacted], petitioner's mother
[Redacted]
[Redacted]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Robert Dwyer, DDS, DCHAA Dental Consultant
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 (16 years old) is a resident of Outagamie County.
2. Petitioner's provider, [REDACTED], Wisconsin, requested PA (P.A. # [REDACTED]; dated April 9, 2013) for Medical Assistance ["MA"] coverage for reshaping bone orthognathic osteotomy for petitioner at a total cost of \$10,434.00.
3. By a letter dated April 16, 2013 DHCAA denied PA # [REDACTED] for reshaping bone orthognathic osteotomy.
4. The evidence in the record of this matter does not support a conclusion that petitioner meets any of the criteria necessary for approval of osteoplasty and osteotomy services for orthognathic deformities.

DISCUSSION

Petitioner appeals because DHCAA denied PA for reshaping bone orthognathic osteotomy. This is a denial of eligibility for services; it is not discontinuation of services. As with any eligibility denial, the burden is on petitioner to show that he is eligible for the requested services. *Lavine v. Milne*, 424 U.S. 577, 583-584 (1976). Petitioner has failed to do so.

Oral and maxillofacial surgery services are covered under MA. Wis. Admin. Code § DHS 107.07(4)(h) (May 2009). However, the services requested by petitioner require PA. Wis. Admin. Code §§ DHS 107.07(2)(a)4.c. & d. (May 2009).¹

In determining whether to approve or disapprove a request for PA the limitations imposed by pertinent federal or state statutes, rules, regulations, or interpretations must be considered. Wis. Admin. Code § DHS 107.02(3)(e)9. (May 2009). Written state policy interpretations provide that osteoplasty and osteotomy services for orthognathic deformities are reimbursed for only the most severe orthodontic skeletal malocclusion. PA requests for correction of orthognathic deformities require a HealthCheck exam. Criteria for PA approval for osteoplasty or osteotomy includes one of the following, where the procedure is necessary to correct:

- The most severe cases of protruding or retruding mandible or maxillae where conventional orthodontics cannot provide a stable and acceptable outcome.
- The most severe cases of open bite where conventional orthodontics cannot provide a stable and acceptable outcome.

¹ Medical services provided to Early and Periodic Screening, Diagnosis and Treatment ["EPSDT"] patients must be covered for all recipients under age 21 years if the EPSDT health assessment and evaluation indicates that they are needed. 42 C.F.R. § 441.56(c)intro. (2011); Wis. Admin. Code §§ DHS 107.22(1) & 107.22(4) (May 2009); See also, 42 USC § 1396d(a) (2006) & Wis. Admin. Code § DHS 101.03(54) (December 2008). Prior Authorization ["PA"] under section DHS 107.02(3) of the Wisconsin Administrative Code is required for coverage of such services. Wis. Admin. Code § DHS 107.22(4) (May 2009). Thus, the determination of whether or not the EPSDT health assessment and evaluation "indicates" that a requested service is "needed" is made by the PA process.

- A significant skeletal malocclusion where conventional orthodontics cannot provide a stable and acceptable outcome.
- Severe malocclusions caused by disease or injury where conventional orthodontics cannot provide a stable and acceptable outcome.

If the deformity has been caused by disease or injury, a physician's statement is required. The criteria for PA approval includes a frenum which creates a central incisor diastema, ankyloglossia, periodontal defects, or is necessary to complete orthodontic services.

ForwardHealth Online Handbook, Topic #2929 “Covered and Noncovered Services : Oral and Maxillofacial Surgery” found at:

<https://www.forwardhealth.wi.gov/WIPortal/Online%20Handbooks/Display/tabid/152/Default.aspx?ia=1&p=1&sa=15&s=2&c=529&nt=Osteoplasty%2FOsteotomy> (accessed June 27, 2013).

Based on the evidence in the record of this matter, petitioner does not satisfy any of the above criteria. In particular, the documentation in the record of this matter is not sufficient to show that the reshaping bone orthognathic osteotomy requested by petitioner is necessary to complete orthodontic services. Additionally, the documentation in the record of this matter also is not sufficient to show that conventional orthodontics cannot provide a stable and acceptable outcome.

Petitioner’s mother testified that petitioner has an open bit that must be corrected before orthodontic services. However, there is no documentation in the record of this matter that states that. Therefore, PA cannot be approved as requested by petitioner. If additional documentation is obtained petitioner may have his provider submitted a new PA with the additional documentation.

CONCLUSIONS OF LAW

For the reasons discussed above, DHCAA was correct to deny PA (P.A. # [REDACTED]) for reshaping bone orthognathic osteotomy for petitioner.

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 27th day of June, 2013

\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 June 27, 2013.

Division of Health Care Access And Accountability