



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/150485

PRELIMINARY RECITALS

Pursuant to a petition filed July 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 in regard to Medical Assistance, a hearing was held on September 18, 2013, at Menomonie, Wisconsin. A hearing scheduled for August 19, 2013, was rescheduled at the petitioner's request.

The issue for determination is whether the petitioner is entitled to a PET scan from the base of her skull to the middle of her thigh to determine the current state of her lung cancer.

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: Robert Derindinger, R.N.

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

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Dunn County.

2. The petitioner was diagnosed with lung cancer in April 2013. An MRI performed on June 18, 2013, confirmed that her cancer had metastasized to her brain.
3. The petitioner has received chemo and radiation therapy. At the time of her hearing, her chemotherapy was scheduled to end in October 2013.
4. The petitioner received PET imaging on April 11, 2013.
5. The petitioner's physician requested an additional PET scan on June 19, 2013, that was denied on the same date.
6. The petitioner's latest request for a PET scan does not include a new physical examination or any evidence that she had any additional symptoms since an earlier examination was performed. Nor did it appear that any new tests were performed.

DISCUSSION

Medical assistance covers physician-prescribed diagnostic services if they are consistent with good medical practices. Wis. Admin. Code, §§ DHS 107.06(1) and 107.25. In an effort to ensure that CT, MRI, MRA, and PET scans are consistent with good medical practice, the Division of Health Care Access and Accountability, under authority granted by Wis. Admin. Code, § DHS 107.02(3)(a), began requiring prior authorization before paying for them. It announced this requirement to providers in October 2010 through *MA Update*, #2010-92. There are several reasons for requiring prior authorization, the most important of which when evaluating imaging requests are "to safeguard against unnecessary or inappropriate care and service; to safeguard against excess payments;...and to determine if less expensive alternative care, services or supplies are usable..." Wis. Admin. Code, § DHS 107.02(3)(b)1., 2., and 4." The guidelines pertaining to requests for imaging were drafted by MedSolutions, a private radiology benefits manager that claims to use evidence-based clinical guidelines derived from national medical associations.

When determining whether a service is necessary, the Division must review, among other things, the medical necessity, appropriateness, and cost of the service; the extent to which less expensive alternative services are available; whether the service is an effective and appropriate use of available services; and the limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including medicare, or private insurance guidelines. Wis. Admin. Code, § DHS 107.02(3)(e)1.,2.,3.,6. , 7., and 9.

"Medically necessary" means a medical assistance service under ch. HFS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. HFS 107.035, is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;
 7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and

9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code, § DHS 101.03(96m).

The petitioner was diagnosed with metastatic lung cancer in April 2013 following various scans, including a positron emission tomography (PET) scan. An MRI performed on June 18, 2013, confirmed that her cancer had metastasized to her brain. MedSolutions received and denied her request for another PET scan the next day. A PET scan uses small amounts of radioactive material to diagnose and determine the severity of various diseases. Follow-up examinations are referred to as restaging examinations.

Imaging Guideline No. ONC-9.4 Restaging/Recurrence states the following in the portion relevant to restaging lung cancer [emphasis in original]:

PET is **not** indicated for restaging of lung cancer, **except for the following:**

- PET is useful for evaluation of abnormalities that are newly discovered by CT or other imaging modalities used for restaging.
- PET may be considered if LFT's or tumor markers become elevated and CT scans are negative or equivocal.
- PET can differentiate persistent or recurrent tumor from necrotic or fibrotic tissues following chemotherapy or radiotherapy.
- PET may help differentiate persistent or recurrent tumors from radiation-induced fibrosis or pleural thickening.
 - **NOTE:** PET following radiotherapy should be delayed a minimum of 12 weeks, due to risk of false positive FDG uptake in lethally irradiated cells and in radiation pneumonitis, unless the clinical situation requires evaluation of disease outside irradiated volume, or if needed to allow an imminent resection attempt.

When the petitioner requested a new PET, there was no evidence that she had developed new symptoms or abnormalities or that the agency had performed new laboratory tests of her. In addition, at the time of the request, she had not completed her chemo and radiation treatment, so it would be too early to review the effects of that treatment. This means that she does not meet any of the criteria listed in this guideline. I am aware of no evidence that the guideline is not scientifically sound, and I am bound by it. Therefore, I must uphold the agency's denial.

I note that nothing prevents the petitioner from requesting further imaging if her condition changes.

CONCLUSIONS OF LAW

The Office of Inspector General correctly denied the petitioner's request for a restaging PET examination because she has not shown that it is medically necessary.

THEREFORE, it is

ORDERED

The petitioner's 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 Madison,
Wisconsin, this 9th day of October, 2013

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Wayne J. Wiedenhoef, Acting Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 9, 2013.

Division of Health Care Access And Accountability