



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MNP/150754

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 16, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Division of Health Care Access and Accountability (DHCAA) in regard to Medical Assistance, a telephonic hearing was held on August 13, 2013, at Milwaukee, Wisconsin. After the hearing and with permission of petitioner, DHA obtained a copy of the August 1, 2013 DHCAA letter by pharmacy specialist Lisa Reese. That August 1, 2013 letter is marked as Exhibit 1 and is received into the hearing record. On or about August 1, 2013 DHCAA sent Exhibit 1 to the petitioner, and petitioner received Exhibit 1.

The issue for determination is whether BadgerCare program correctly denied petitioner's payment for the prescription Vyvanse because the pharmacy provider failed to submit the required prior authorization for that prescription.

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: Lisa Reese, pharmacy specialist, written submission only  
Division of Health Care Access And Accountability  
1 West Wilson Street  
P.O. Box 309  
Madison, WI 53701-0309

**ADMINISTRATIVE LAW JUDGE:**

Gary M. Wolkstein  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County who is certified with her son, JN, for MA through the BadgerCare Plus Benchmark Plan since May 1, 2013.
2. The petitioner's pharmacy provider, [REDACTED] (located at [REDACTED], Milwaukee WI) dispensed to the petitioner's son the brand name drug Vyvanse, 30 mg. during the period of May 17, 2013 through at least June 27, 2013.
3. During the hearing, petitioner was unable to provide any copy of the [REDACTED] bills for Vyvanse during the non-payment period in question.
4. The petitioner did not receive any negative notice from DHCAA regarding denial of payment for Vyvanse.
5. [REDACTED] (located at [REDACTED], Milwaukee WI) failed to submit to DHCAA any prior authorization on behalf of petitioner's son for Vyvanse 30 mg under the Benchmark Plan Health Check Other Services plan for children under 21 years of age.
6. In her August 1, 2013 letter Ms. Reese indicated that DHCAA denied several claims on behalf of petitioner's son from [REDACTED] for dates between May 17, 2013 through June 27, 2013 because [REDACTED] failed to submit the required PA request and because the brand name drug, Vyvanse, is generally not a covered drug under the Benchmark Plan. See Exhibit 1.
7. Coverage consideration for Vyvanse is possibly available through HealthCheck Other Services for Benchmark Plan members under 21 year of age, but only if the pharmacy submits a prior authorization (PA) form to the Division of Health Care Access and Accountability (DHCAA).

### DISCUSSION

The Bureau may only reimburse providers for medically necessary and appropriate health care services and equipment listed in Wis. Stat. §§ 49.46(2) and 49.47(6)(a), as implemented by Wis. Admin. Code Ch. DHS 107. Some services and equipment are covered if a prior authorization request is submitted and approved by the Bureau in advance of receiving the service. Finally, some services and equipment are never covered by the MA program.

#### NO PRIOR AUTHORIZATION REQUEST SUBMITTED BY PETITIONER'S PROVIDER FOR VYVANSE

In this case, [REDACTED] Pharmacy failed to obtain the requisite prior authorization for possible coverage of the petitioner's son's prescription for the drug Vyvanse. Wis. Adm. Code, §HFS 106.03(4)(b) covers this situation:

HEALTH CARE SERVICES REQUIRING PRIOR AUTHORIZATION. No payment may be made on a claim for service requiring prior authorization if written prior authorization was not requested and received by the provider prior to the date of service delivery, except that claims that would ordinarily be rejected due to lack of the provider's timely receipt of prior authorization may be paid under the following circumstances:...

(b) Where the service requiring prior authorization was provided before the recipient became eligible, and the provider applies to and receives from the department retroactive authorization for the service; ....

MA providers are informed of the need to obtain authorization in cases of backdating in the department's MA Providers Handbook, at page A8-005. Because [REDACTED] failed to obtain authorization before submitting the bill to the MA program, the program correctly denied payment.

Obviously petitioner still is concerned that there are bills for the Vyvanse. However, at this point [REDACTED] is not allowed to pursue payment from petitioner. Wis. Adm. Code, § DHS 104.01(12) provides as follows:

(b) *Freedom from having to pay for services covered by MA.* Recipients may not be held liable by certified providers for covered services and items furnished under the MA program, except for copayments or deductibles under par. (a), if the patient identifies himself or herself as an MA recipient and shows the provider the MA identification card.

(c) *Prior authorization of services.* When a service must be authorized by the department in order to be covered, the recipient may not be held liable by the certified provider unless the prior authorization was denied by the department and the recipient was informed of the recipient's personal liability before provision of the service. In that case the recipient may request a fair hearing. Negligence on the part of the certified provider in the prior authorization process shall not result in recipient liability.

[REDACTED] failed to obtain payment for petitioner's Vyvanse because it did not follow the MA rules for obtaining authorization prior to obtaining payment. [REDACTED] therefore cannot seek payment from petitioner; its only method of payment is through the MA program, and it will have to deal with the MA program if it hopes to receive payment. At this point, DHCAA has not issued any denial notice to the petitioner because [REDACTED] has not submitted any PA request on behalf of petitioner's son for the Vyvanse under the Benchmark Plan Health Check Other Services plan for children under 21 years of age.

As dicta, it is suggested that petitioner request that [REDACTED] promptly submit a complete and proper PA request to DHCAA for her son's Vyvanse under the Benchmark Plan Health Check Other Services plan for children under 21 years of age. If that PA request is denied, then petitioner may then file a new to DHA for that PA denial for Vyvanse.

### CONCLUSIONS OF LAW

The DHCAA correctly denied payment for the petitioner's son's drug, Vyvanse, because the pharmacy provider, [REDACTED], failed to obtain authorization prior to filing its claims with the MA program.

**THEREFORE, it is**

**ORDERED**

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 7th day of October, 2013

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\sGary M. Wolkstein  
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 October 7, 2013.

Division of Health Care Access And Accountability