



FH

[REDACTED]

STATE OF WISCONSIN
Division of Hearings and [REDACTED]

In the Matter of

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/150978

PRELIMINARY RECITALS

Pursuant to a petition filed July 26, 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 August 28, 2013. At petitioner’s request a Hearing scheduled for September 17, 2013 was rescheduled to an earlier date.

The issue for determination is whether DCHAA was correct to deny Prior Authorization [“PA”] for MA payment for the drug Gilenya for petitioner.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

Represented by:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Lynn Radner, R.Ph., Pharmacy Practices Consultant, DCHAA (Dr. Radner did not appear at the August 28, 2013 Hearing but submitted a letter dated August 21, 2013 with attachments (Exhibit #1))

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

OTHER PERSON PRESENT:

[REDACTED], petitioner’s friend

ADMINISTRATIVE LAW JUDGE:
Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (69 years old; CARES # [REDACTED]) is a resident of Walworth County.
2. On May 15, 2013 petitioner's provider, [REDACTED] [REDACTED] [REDACTED] of Buffalo Grove, Illinois, requested PA (PA # [REDACTED] dated May 14, 2013) for MA coverage of the brand name drug Gilenya (fingolimod) at a total cost of about \$56,772.00 per year. Exhibits #1 & #2.
3. DCHAA denied P.A. # [REDACTED] for the drug Gilenya; DCHAA sent a letter to petitioner dated July 16, 2013 and entitled *BadgerCare Plus Notice of Appeal Rights* informing her of the denial. Exhibits #1 & #2.
4. Gilenya is a non-preferred drug in the Multiple Sclerosis ["MS"] agents, immunomodulators drug class; petitioner has not attempted a preferred drug in that class; petitioner has not presented sufficient evidence to show that she has a condition that prevents the use of a preferred drug; Gilenya is oral whereas the preferred drugs are injectable. *ForwardHealth Update*, November 2010, No. 2010-103, "Changes to Pharmacy Policies Occurring in December 2010", (page 7); Exhibits #1 & #2.

DISCUSSION

As with any eligibility denial, the burden is on petitioner to show that she is eligible for the requested services. *Lavine v. Milne*, 424 U.S. 577, 583-584 (1976). Petitioner has failed to make such a showing.

By law, MA pays only for medically necessary and appropriate health care services when provided to currently eligible MA recipients. Wis. Admin. Code §§ DHS 107.01(1) & 107.17(1) (May 2009); See also, Wis. Stat. §§ 49.46(2) & 49.47(6)(a) (2011-12). In order for a service to be *medically necessary* it must meet several specific requirements. See, Wis. Admin. Code § DHS 101.03(96m) (December 2008).

Gilyena requires PA. *ForwardHealth Update*, November 2010, No. 2010-103, "Changes to Pharmacy Policies Occurring in December 2010", ["2010 Update"] (page 7) -- attachment to Exhibit #1; See also, Wis. Admin. Code § DHS 107.10(2)(d) (May 2009). 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 limitations in effect at the time petitioner's provider requested PA provided that PA for Gilyena can be approved only if the MA recipient attempted a preferred drug or has a medical condition preventing the use of a preferred drug.¹ 2010 Update, page 8. The preferred drugs are Avonex, Betaseron, Copaxone, and Rebif. Exhibit #1.

¹ This policy has been changed since the time that petitioner's provider requested PA. See, *ForwardHealth Update*, June 2013, No. 2013-35, "July 2013 Preferred Drug List Review and Other Pharmacy Policy Changes", ["2013 Update"], (page 17) -- attachment to Exhibit #1. The changes were effective for dates of service on and after July 1, 2013. 2013 Update, page 1.

Petitioner has not attempted a preferred drug. Petitioner does not deny this. Further, petitioner has not presented sufficient evidence to show that she has a condition that prevents the use of a preferred drug. Petitioner's medical doctor did submit a letter dated July 10, 2013 which stated that petitioner's "symptoms include slow, ataxic and unsteady gait, tendency to Babinski sign bilaterally, hyperactive muscle stretch reflexes, and loss of balance (positive Romberg test). [Petitioner's] symptoms inhibit her from injecting the injectable medications (i.e. Copaxone, Avonex, Rebif) interfering in her ability for compliance." Exhibit #2(attachment). It is not understood why petitioner's symptoms, as described by her medical doctor, would inhibit her from injecting medication. The symptoms described by petitioner's medical doctor relate to gait and ambulation.

CONCLUSIONS OF LAW

For the reasons discussed above, DCHAA was correct to deny PA for MA payment for the drug Gilenya 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 30th day of August, 2013

\sSean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND [REDACTED]

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The preceding decision was sent to the following parties on August 30, 2013.

Division of Health Care Access And Accountability