



FH
[REDACTED]

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

In the Matter of

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

DECISION

MPA/151455

PRELIMINARY RECITALS

Pursuant to a petition filed August 14, 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 (DHCAA) in regard to Medical Assistance, a telephonic hearing was held on October 07, 2013, at Stevens Point, Wisconsin. At the request of petitioner’s representative, the record was held open until October 21, 2013 for the submission of additional medical evidence or documentation to the Division of Hearings and Appeals (DHA), and then for a reconsideration by DHCAA. Petitioner failed to submit any evidence to DHA by October 21, 2013 or even by the date of this decision.

The issue for determination is whether the Department correctly denied the petitioner’s prior authorization (PA) request for the nutritional supplement, Pediasure, due to failure to establish the medical necessity of that food supplement.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Representative:

[REDACTED] [REDACTED], mother
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Lynn Radmer, R.Ph., pharmacy 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:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a 6 year old resident of Portage County who is certified for MA.
2. The petitioner's provider, [REDACTED], submitted on or about July 24, 2013 a prior authorization request (PA) request # [REDACTED] to the Division of Health Care Access and Accountability (DHCAA) to request on behalf of petitioner 8 cans per day of Pediasure for one year at a requested cost of \$5,272.68. That PA request failed to provide the following documentation regarding petitioner: a) provider submitted no growth charts for petitioner; b) no swallow evaluation was submitted; c) there is no description of why a diet of regular or altered consistency (pureed) table foods and beverages is not nutritionally sufficient for petitioner; and d) there is no clinical documentation to support a metabolic condition.
3. The Division denied the PA request on July 29, 2013. DHCAA issued two prior PA denials of Pediasure for petitioner on September 17, 2012 in PA # [REDACTED], and then again on August 14, 2012 in PA # [REDACTED].
4. The Division's basis for denial was the request did not satisfy MA guidelines for approval. MA usually does not pay for enteral nutrition supplement/replacement food products except if that MA recipient meets specific exceptions. Pediasure is a general purpose enteral nutrition product.
5. The petitioner has diagnoses of failure to thrive, developmental delay, growth hormone deficiency, seizure disorder, and feeding disorder/difficulty. She was 37 inches tall and weighed 31 pounds during July, 2013. Her caloric needs are about 1,950 calories daily. The requested eight cans of Pediasure would provide about 1,950 calories daily.
6. The petitioner is capable of eating and swallowing pureed foods including fruits, beef, hamburger, pork and other foods. However, it is difficult to get petitioner to eat foods in part due to "tactile defensiveness."
7. The record was held open until October 21, 2013 for the submission of additional medical evidence or documentation by the provider or petitioner's representative to the Division of Hearings and Appeals (DHA) regarding the medical necessity of the Pediasure for petitioner. Neither the provider nor petitioner submitted any evidence to DHA by October 21, 2013 or even by the date of this decision.

DISCUSSION

Medically necessary food replacement enteral and parenteral products can be an MA-covered service, subject to prior authorization. Wis. Admin. Code §DHS 107.10(1),(2)(c). Pediasure is a high calorie food replacement product. The code only allows for MA 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 petitioner requested a one year authorization for Pediasure during July, 2013, and was denied for the reasons set forth in the above Findings of Fact. The Department issued new prior authorization guidelines for food supplements, via a *ForwardHealth Update*, No. 2011-88 (December, 2011). The *Update*, issued to assist in applying the prior authorization criteria for food replacement products on a uniform basis, declares that MA will not pay for enteral nutrition products that may be purchased at a drug store or other retail outlet with WIC vouchers. For approval of general purpose enteral nutrition products (which is the subject here), the petitioner **must have one of the following:**

- A severe swallowing disorder due to oral-pharyngeal tissue injury, trauma, excoriation (i.e., lesions, mucositis), or defect.
- Pathology of the gastrointestinal (GI) tract that prevents digestion, absorption, or utilization of nutrients that cannot otherwise be medically managed.
- Transition from tube feeding (enteral or parenteral) to an oral diet.

Update, p.2. There is no evidence to support a finding that the petitioner has one of the above described swallowing disorders, or that she is transitioning from tube feeding to an oral diet. The petitioner's representative did not establish with medical evidence that [REDACTED] has a GI tract pathology that prevents digestion/absorption/ utilization of nutrients, and that such pathology "cannot otherwise be medically managed." The petitioner's inadequate nutritional intake *can* be otherwise medically managed through other means, such as pureed foods. Thus, application of the Department's current policy to this case results in a denial of the request.

During the October 7, 2013 hearing, petitioner's mother, Ms. [REDACTED] [REDACTED], admitted that [REDACTED] is capable of eating and swallowing pureed foods including fruits, beef, hamburger and pork. However, Ms. [REDACTED] explained that it is difficult to get [REDACTED] to eat foods in part due to alleged "tactile defensiveness" due to her being blind. The hearing record only appears to indicate some level of behavioral or psychological aversion to normal pureed foods. MA policy makes clear that such aversion is not a basis for approval of Pediasure. Furthermore, while the record was held open, neither the provider nor petitioner's representative submitted any additional medical evidence or documentation to establish the medical necessity of the requested Pediasure for the petitioner. The petitioner was unable to refute the Department's reasons for denial of the requested Pediasure. Accordingly, based upon the above, I must conclude that the Department correctly denied the petitioner's prior authorization (PA) request for the nutritional supplement, Pediasure, due to failure to establish the medical necessity of that food supplement.

CONCLUSIONS OF LAW

Department correctly denied the petitioner's prior authorization (PA) request for the nutritional supplement, Pediasure, due to failure to establish the medical necessity of that food supplement.

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 4th day of November, 2013

\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 November 4, 2013.

Division of Health Care Access And Accountability