FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

MPA/151813

PRELIMINARY RECITALS

Pursuant to a petition filed August 28, 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 telephone hearing was held on October 21, 2013.

The issue for determination is whether the petitioner is eligible for Medical Assistance reimbursement for orthotics.

There appeared at that time the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
Written Appearance by: Pamela J. Hoffman, PT, DPT, MS
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:
Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Outagamie County who is certified for MA.

2. On or about July 3, 2013, the petitioner's provider, [redacted], submitted to the respondent on behalf of the petitioner a prior authorization (PA) request for MA coverage of foot orthotics.
3. The respondent denied the prior authorization request on July 10, 2013, because the requested orthotics are not covered by the MA program due to neither the petitioner nor her provider establishing that the PA request meets any of the approval criteria for MA coverage. Exhibit 2.
4. The petitioner's diagnoses include degenerative joint disease, which has resulted in a partial knee replacement, as well as plantar fasciitis. The orthotics were requested to accommodate the petitioner's foot/arch/gait abnormalities as well as the gait mechanics that have affected her degenerative joint disease. See, Exhibit 1.
5. The petitioner does not wear a brace or bar, she does not have a post-surgical condition, and she has no established gross deformities of the feet.

DISCUSSION

The Division 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 DHS Chapter 107. Some services and equipment are covered if a prior authorization request is submitted and approved by the Division in advance of receiving the service. Finally, some services and equipment are never covered by the MA program.

Orthotics can be a covered MA item, if prior authorization is obtained. Wis. Admin. Code § DHS 107.24(2)(c)2, & (3). To be approved, all prior authorization requests must pass the generic prior authorization criteria found at Wis. Admin. Code §DHS 107.02(3)(e). In addition, the code contains additional criteria that must be satisfied for specific items. For orthotics, there are such additional criteria which provide for very limited circumstances in which MA pays, as codified at §DHS 107.24(4)(f):

> (4) OTHER LIMITATIONS. ...
> (f) Orthopedic or corrective shoes or foot orthoses shall be provided <u>only</u> for postsurgery conditions, gross deformities, or when attached to a brace or bar. These conditions shall be described in the prior authorization request.

(Emphasis added).

The condition of the petitioner's feet at this time does not satisfy the above criteria. Her shoes do not need to be attached to a brace or bar. Petitioner's provider has not specified an established gross foot deformity or a postsurgical condition. The petitioner's physician, Dr. [redacted], MD, submitted an August 23, 2013, letter in which she contended that the orthotics were necessary because petitioner ". . . would benefit from customized orthotics to treat both foot/arch/gait abnormalities as well as the gait mechanics that have affected her DJD. Not only would this help with pain on a daily basis, but likely prevent further degeneration of her joints and the need for future treatment/surgeries and daily medications." Exhibit 1.

In her denial summary to DHA, respondent's consultant correctly stated: "Foot orthotics are non-covered equipment when used to treat foot pain in the absence of foot deformity or gait deviations." Exhibit 1. Petitioner's PA request noted that petitioner has a heel spur, and her provider has commented on her foot "abnormalities." Exhibit 1. However, without measurements and descriptions of a gross foot deformity, the respondent cannot come to the conclusion that the requested orthopedic shoes meet Medicaid's definition of medical necessity. While the plantar fasciitis and degenerative joint disease are legitimate medical concerns of the petitioner, neither petitioner nor her provider has established that any of her medical conditions qualify as "gross deformities." Although orthotics might help protect the petitioner's feet and provide some

pain relief, there is no legal basis for MA payment for such orthotics at this time. I do not have the authority to deviate from the above stated rules governing coverage for orthotics.

The petitioner's provider may file a new PA Request on behalf of the petitioner at any time, and should provide all the necessary measurements, clinical documentation, and cost analysis, to show that the requested items are medically necessary and covered by the MA program. I note to petitioner that her providers will not receive a copy of this Decision. The petitioner is encouraged to share this Decision, as well as the September 24, 2013, correspondence from the respondent, with her providers to ensure that any future PA requests substantively address all requirements for approval.

CONCLUSIONS OF LAW

The respondent correctly denied the petitioner's prior authorization request for orthotics because the condition of the petitioner's feet does not currently satisfy any of the approval criteria required by the Wis. Admin. Code §DHS 107.24(4)(f).

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 15th day of November, 2013

\sPeter McCombs
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 15, 2013.

Division of Health Care Access And Accountability