



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MPA/152602

PRELIMINARY RECITALS

Pursuant to a petition filed October 02, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Office of the Inspector General (OIG) in regard to Medical Assistance, a telephonic hearing was held on November 06, 2013, at Milwaukee, Wisconsin.

The issues for determination are: a) whether the Department correctly denied the petitioner’s prior authorization (PA) request for “compression therapy” after his surgery because not cost effective or appropriate; and b) whether the petitioner is liable for the PA cost per DHS 104.01(12), Wis. Adm. Code due to provider failing to secure approval of the PA prior to providing the equipment to petitioner.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Pamela Hoffman, DPT, physical therapy 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 # ) is a 47 year old resident of Milwaukee County who received MA.

2. The petitioner underwent left rotator cuff tear surgery on August 26, 2013.
3. The petitioner's provider, [REDACTED], submitted on July 31, 2013 a prior authorization (PA) request for compression therapy (a "Kinex ThermoComp) at a requested cost of \$1,392 for four weeks for pneumatic compression of his rotator cuff to allegedly prevent post-operative deep vein thrombosis (DVT) as a complication from surgery.
4. The provider did not notify the petitioner that he would be liable for the compression therapy if it was not approved by MA. Instead, the provider simply sent the medical device to the petitioner, and petitioner thought the device had already been approved by the Medicaid program.
5. OIG sent an August 22, 2013 denial notice to the petitioner indicating that petitioner's PA request was denied because: a) the provider did not establish that petitioner has clinical conditions (such as impaired circulatory system) to require segmental pneumatic compression for the petitioner after his surgery; and b) the petitioner is not liable for the compression device because the provider failed to comply with MA rules and secure prior authorization from OIG prior to sending the device to the petitioner .

DISCUSSION

During the November 6, 2013 hearing, petitioner agreed that the Department correctly denied the PA request for the compression device because he had no circulatory problems, was able to walk, and had no other condition to justify the medical need for the compression device. The provider did not send any evidence or documentation to establish that petitioner had any clinical condition indicating impaired circulatory system to medically justify the device.

Both the Wisconsin Administrative Code and written policy are very clear, in several places, that, if a prior authorization (PA) is not requested and obtained before a service requiring PA is provided, reimbursement shall not be made. Wis. Admin. Code § DHS 107.02(3)(c); See also, Wis. Admin. Code §§ DHS 106.03(4)(intro.), 107.02(2)(h) & 107.03(9), *WMAP Provider Handbook* (WMAP Handbook) Part A Section VIII-C (page A8-001) & Part A Appendix 15 (page A11-041 #2); additionally see, Wis. Admin. Code §§ DHS 107.02(1)(a), 107.02(2)(intro.), 107.02(2)(a), 107.02(3)(e)9. & 107.02(3)(i)2.c.

The Wisconsin Administrative Code does allow several exceptions to the requirement that the PA must be requested and obtained before a service requiring PA is provided. First, reimbursement may be made in extraordinary circumstances such as emergency cases where the department has given verbal authorization for the service. Wis. Admin. Code §§ DHS 107.02(3)(c) & 107.03(9). Additionally, reimbursement may be made in the following three circumstances: (1) if a denial of PA is rescinded in writing by DHCAA or overruled by an administrative or judicial order; (2) where the service was provided before the recipient became eligible for MA and the provider applies to and receives from DHCF retroactive authorization for the service; and, (3) where time is of the essence in providing a service which requires PA, and verbal authorization is obtained by the provider from DHCAA's medical consultant or designee. Wis. Admin. Code § 106.03(4); See also, WMAP Handbook Part A Section VIII-C (page A8-001) & Part A Appendix 15 (page A11-041 #2).

To ensure payments for claims for verbally authorized services, the provider must retain records which show the time and date of the authorization and the identity of the individual who gave the authorization, and must follow-up with a written authorization request form attaching documentation pertinent to the verbal authorization. Wis. Admin. Code § DHS 106.03(4)(c). Verbal authorization is only allowed in extraordinary circumstances such as emergency cases or where time is of the essence in providing a service. Wis. Admin. Code §§ DHS 107.02(3)(c) & 107.03(9); Wis. Admin. Code § 106.03(4).

In the instant case, the petitioner did not claim that he meets any of the above exceptions. The record confirms that petitioner does not meet any of the above exceptions, and OIG correctly denied MA payment for the compression therapy.

During the November 6, 2013 hearing, the petitioner testified convincingly under oath that the provider did not notify him that he would be liable for the compression therapy if it was not approved by MA. Instead, the provider simply sent the medical device to the petitioner, and petitioner thought the device had already been approved by the Medicaid program.

Petitioner should note that the Wisconsin Administrative Code makes abundantly clear that when a service must be authorized by OIG in order to be covered, **the recipient may not be held liable by the certified provider unless the prior authorization was denied by DHCAA 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. Wis. Admin. Code DHS § 104.01(12)(c).

As compression therapy is a covered service of ForwardHealth and requires prior authorization, the petitioner is not responsible for payment for the use of the ThermoComp device delivered to him. The petitioner is not responsible for payment to the provider because the provider failed to comply with the rules and regulations of the Medicaid program, i.e. securing prior authorization from the department prior to providing the service to the petitioner.

If a provider renders a service which requires prior authorization, without first obtaining authorization, the provider is responsible for the cost of the service. **NOTE:** Exceptions are the provision of services that require prior authorization, but were performed without prior authorization as an emergency service, and in cases of provider/recipient retroactive eligibility." There were no emergency circumstances with the petitioner provision of the compression device and no retroactive eligibility.

CONCLUSIONS OF LAW

The Department correctly denied the petitioner's prior authorization (PA) request for "compression therapy" after his surgery because the provider did not establish such device was cost effective, appropriate, or medically necessary.

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, Room 651, 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 27th day of December, 2013

\sGary M. Wolkstein
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

Brian Hayes, 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 December 27, 2013.

Division of Health Care Access And Accountability