



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

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/153069

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed October 22, 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 December 11, 2013.

The issue for determination is whether petitioner is eligible for payment by the MA program for the shoes requested in Prior Authorization [“PA”] # [REDACTED].

There appeared at that time via telephone the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Pamela J. Hoffman, PT, DPT, MS, PT Consultant, DCHAA [Ms. Hoffman did not appear at the December 11, 2013 Hearing, but submitted a letter dated November 11, 2013 with an attachment].

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

**ADMINISTRATIVE LAW JUDGE:**

Sean P. Maloney  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]; 56 years old) is a resident of Marathon County.

2. On July 29, 2013 petitioner's provider, [REDACTED], Wisconsin, requested Prior Authorization (PA # [REDACTED] dated July 29, 2013) for MA coverage of diabetic shoes and foot orthotics for petitioner at a total cost of \$582.00.
3. On September 25, 2013 DCHAA denied PA request # [REDACTED] for diabetic shoes and foot orthotics; DCHAA sent petitioner a letter dated September 25, 2013 and entitled *BadgerCare Plus Notice of Appeal Rights* informing petitioner of the denial.
4. The shoes requested for petitioner in PA # [REDACTED] are *New Balance* men's shoes, size 12 wide or 2E wide; these are athletic shoes that are commonly available in retail stores and are not primarily used for medical purposes.

### DISCUSSION

MA pays for orthopedic or corrective shoes only when they qualify as Durable Medical Equipment ["DME"]. Wis. Admin. Code § DHS 107.24(2)(c) (May 2009). In order to qualify as DME orthopedic or corrective shoes must be primarily for medical purposes and generally not useful to a person in the absence of illness or injury. Wis. Admin. Code § DHS 101.50 (December 2008); See also, Wis. Admin. Code § DHS 101.34 (December 2008). The *New Balance* athletic shoes requested in in PA # [REDACTED] are not primarily for medical purposes. Further, the shoes generally are useful to a person even in the absence of illness or injury. Therefore, the *New Balance* athletic shoes do not qualify as DME. It follows that petitioner is not eligible for payment by the MA program for those shoes.

### CONCLUSIONS OF LAW

For the reasons discussed above, petitioner is not eligible for payment by the MA program for the shoes requested in PA # [REDACTED].

**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, 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 6th day of January, 2014

---

\sSean P. Maloney  
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](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 6, 2014.

Division of Health Care Access and Accountability