



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████ ██████
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██████████████████████████████

DECISION

HMO/153743

PRELIMINARY RECITALS

Pursuant to a petition filed November 25, 2013, under Wis. Stat. § 49.45(5)(a), and Wis. Admin. Code § HA 3.03, to review a decision by the Division of Health Care Access and Accountability (Division or DHCAA) in regard to Medical Assistance (MA), a hearing was held on January 21, 2014, by telephone.

The issue for determination is whether the Division's agent, an HMO, correctly denied a prior authorization request for gastric bypass surgery

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

██████ ██████
██████████████████
██████████████████████████████

Respondent:

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

By written submission of:
Lucy Miller, Nurse Consultant
Division of Health Care Access and Accountability
Madison, WI

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of La Crosse County. She is certified for MA/BadgerCare Plus.
2. A prior authorization request for gastric bypass surgery was submitted on the petitioner's behalf to her MA/BadgerCare Plus HMO in the fall of 2013. On October 23, 2013, the HMO issued written notice of the denial of the request. That denial prompted the instant hearing request.

3. The HMO must follow the same standards for gastric bypass surgery approval as are used in “regular” fee-for-service MA. The HMO’s basis for denial was that the petitioner did not have a co-morbid medical condition that was refractory to treatment.
4. The petitioner, age 31, has a Body Mass Index of 46. She has diagnoses of obesity, sleep apnea, high blood pressure, gastro-esophageal reflux disease, asthma, and high cholesterol.
5. The petitioner underwent the required bariatric team evaluation that included a psychological evaluation.
6. Although the petitioner was diagnosed with severe sleep apnea, the consulting clinician found that her apnea was “eliminated” by using a CPAP machine at a setting of “13.” The petitioner has tried using the CPAP, and dislikes it, finding it to be claustrophobic.

DISCUSSION

The petitioner requests prior authorization for gastric bypass surgery to control her chronic obesity. Medical assistance covers this procedure through the prior authorization process only if there is a medical emergency. See Wis. Stat. § 49.46(2).

I. HISTORY OF APPROVAL GUIDELINES PRIOR TO DECEMBER, 2005.

Before 2001, authorization guidelines for the bypass procedure made approval nearly impossible, because the Division argued that the “medical emergency” requirement meant that the authorization request had to show that the person’s weight posed an immediate threat to his or her life. It further contrarily required that if this threat did occur, no prior authorization was necessary. This created a procedure that required prior authorization, but could paradoxically only be authorized and paid without prior authorization.

In 2001, the *Prior Authorization Guidelines Manual*, §117.014.02, changed the approval criteria to the following more attainable requirements: (1) The patient must have acceptable operative risks and be able to participate in treatment and long-term follow-up; *and* (2) have either a Body Mass Index (BMI) of at least 40, or BMI from 35-39 plus a high-risk co-morbid medical condition clinically judged to be life-threatening, such as documented sleep apnea, Pickwickian syndrome, obesity-related cardiomyopathy, or severe diabetes mellitus.

Revised guidelines issued in July, 2005, and March, 2009, attempted to address the inconsistency between the 2001 criteria and other code requirements that more cost-effective means be tried first. *E.g.*, the patient had to participate in a medically-supervised diet plan. The revised guidelines contained approval criteria related to BMI, co-morbid medical conditions that were unresponsive to medical management, documentation of previous supervised weight loss efforts, evaluation by a bariatric team, and attaining age 18.

II. THE PETITIONER DOES NOT SATISFY CURRENT REQUIREMENTS DUE TO LACK OF A COMORBID CONDITION.

The *Prior Authorization Guidelines Manual* was amended on December 7, 2005, and again in August, 2011. The change was to provision A1, related to BMI. That provision now reads:

The member has a body mass index greater than 35 with at least one documented high-risk, life-limiting comorbid medical conditions capable of producing a significant decrease in health status that are demonstrated to be unresponsive to appropriate treatment. There is evidence that significant weight loss can substantially improve the following comorbid conditions:

- Sleep apnea.
- Poorly controlled Diabetes Mellitus while compliant with appropriate medication regimen.
- Poorly controlled hypertension while compliant with appropriate medication regimen.
- Obesity-related cardiomyopathy.

See, *ForwardHealth Update*, No. 2011-44 (August, 2011)

The reason that the Division denied the petitioner's request was that the current authorization guidelines require the documented presence of a life-threatening co-morbid condition. Her only diagnosis, other than morbid obesity, that is an emergency, life-threatening condition is her sleep apnea. However, the policy guidelines also say that treatment of the condition must be attempted. Only if the treatment fails and the life-threatening condition remains, is an authorization granted. The petitioner has not demonstrated that use of the CPAP will fail to successfully treat her condition; she has only established that she dislikes the treatment. The HMO had a sufficient basis for denial of the surgery request. The Division properly applied the current guidelines here, and denied this authorization request. The petitioner may submit a new authorization request if her condition deteriorates in the future.

CONCLUSIONS OF LAW

Petitioner is not currently eligible for MA authorization and payment for gastric bypass surgery.

THEREFORE, it is

ORDERED

That the petition is 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 10th day of February, 2014

\sNancy J. Gagnon
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 February 10, 2014.

Division of Health Care Access and Accountability