



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/154407

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 23, 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 (Division or DHCAA) in regard to Medical Assistance (MA), a hearing was held on February 6, 2014, by telephone.

The issue for determination is whether the Division correctly denied a prior authorization request for foot orthotics.

There appeared at that time 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 written submission of:  
Pamela 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:**

Nancy J. Gagnon  
Division of Hearings and Appeals

**FINDINGS OF FACT**

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

2. On November 14, 2013, a prior authorization request (#...052) was submitted on the petitioner's behalf for foot orthotics, at a cost of \$826. The Division issued written notice of denial on November 25, 2013.
3. The Division's basis for denial was that state code does not allow payment for foot orthotics for the petitioner's specific foot condition.
4. The petitioner, age 51, lives in her home in the community. She has diagnoses of plantar fasciitis, pes planus (flat feet), and diabetes. The request has the following detail: "[the petitioner has] quite a severe flatfoot deformity, a very low arch, fully compensated small rear foot varus and she performed poor on the toe raise test with the feet being very flat and wide. They tend to splay quite a bit causing overstretching of the medial longitudinal arch, which accounts for some of her inflammation."
5. The petitioner does not have a gross foot deformity, a leg length discrepancy of ½ inch or more, mismatched shoes with a full size difference, or the need to attach her shoe to a brace or bar.
6. The petitioner does not have a partial foot amputation, skin ulceration, or a pre-ulcerative callus condition. The skin on her heels is very dry, with some cracking. The petitioner complains of increased difficulty with balance when she does not have orthotics in her shoes (she has used orthotics in the past).

### DISCUSSION

The Division denied the petitioner's request for foot orthotics. The state Medicaid code language states:

(2) COVERED SERVICES. ...

(c) ...

2. Orthopedic or corrective shoes. These are any shoes attached to a brace for prosthesis; mismatched shoes involving a difference of a full size or more; or shoes that are modified to take into account discrepancy in limb length or a rigid foot deformation. Arch supports are not considered a brace. Examples of orthopedic or corrective shoes are supinator and pronator shoes, surgical shoes for braces, and custom-molded shoes.

...

(4) OTHER LIMITATIONS.

...

Orthopedic or corrective shoes or foot orthoses shall be provided only for postsurgery conditions, gross deformities, or when attached to a brace or bar. These conditions shall be described in the prior authorization request.

Wisconsin Administrative Code § DHS 107.24(2), (4)(f)

Medical assistance regulations specifically prohibit coverage of foot orthoses for flattened arches, incomplete dislocation of metatarsalgia, arthritis with no associated deformities, or hypoallergenic conditions. Wis. Adm. Code, § DHS 107.24(5)(a)1.

The petitioner did not contend that she has any of the conditions identified in Wis. Admin. Code § DHS 107.24(2)(c). There is no exception in the code for a diagnosis of diabetes. Of course, some diabetics have a foot deformity because part of the foot has been amputated. That situation would fall under the code and result in approval. However, that has not happened here. Therefore, denial of her authorization request was correct.

**CONCLUSIONS OF LAW**

1. Denial of the requested orthoses was correct, as the petitioner's condition does not meet the criteria at Wis. Admin. Code § DHS 107.24(2)-(4).

**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 7th day of February, 2014

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\sNancy J. Gagnon  
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 February 7, 2014.

Division of Health Care Access and Accountability