



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

|

[REDACTED]

MPA/154927

PRELIMINARY RECITALS

Pursuant to a petition filed January 16, 2014, 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 hearing was held on February 25, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether a prior authorization request for upper partial dentures for Petitioner meets the criteria necessary for Wisconsin Medicaid program payment.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

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Respondent:

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

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

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. On or about December 11, 2013 Petitioner's provider filed a prior authorization request seeking Medicaid payment for a partial upper denture for Petitioner. The cost was noted to be \$600.00.

3. This request was denied by the Department as Petitioner ‘...has at least 2 posterior teeth bilaterally that can be used for chewing and fewer than 6 missing upper teeth’. See Exhibit #3.
4. Additional information was received from Petitioner’s provider post hearing, it notes 6 missing teeth – 4 congenitally missing or removed when Petitioner was young and two pulled as they could not be restored. This was referred back to the Department for review. It did not change the original decision.

DISCUSSION

The Division of Health Care Financing can make regulations concerning dental procedures. Wis. Admin. Code § DHS 107.02(3)(e). It has used this authority to deny partial dentures under the following circumstances: “If two (2) or more posterior teeth are present per quadrant and in occlusion with the opposing quadrant and no anterior teeth are missing, and the recipient has fewer than six missing teeth per the arch in question.” *Prior Authorization Guidelines Manual*, § 124.011.06. The approval criteria include the following:

A member qualifies for a partial denture if any of the following criteria are met:

- One or more anterior teeth are missing.
- The member has less than two posterior teeth per quadrant in occlusion with the opposing quadrant.
- The member has at least six missing teeth per arch, including third molars.
- A combination of one or more anterior teeth are missing, and the member has less than two posterior teeth per quadrant in occlusion with the opposing quadrant.
- The member requires replacement of anterior teeth for employment reasons.
- Medically necessary for nutritional reasons documented by a physician.
- Unusual clinical situations where a partial is determined to be necessary based on a comprehensive review of the dental and medical histories.

See online provider handbook, Topic # 2895; <https://www.forwardhealth.wi.gov>.

The Department did conclude that it could not authorize upper dentures because Petitioner does not meet any of the criteria above. There is no evidence that suggest that this decision by the Department is incorrect.

Petitioner also asks that the Division of Hearings and Appeals approve the requested upper based on general need and financial circumstances. The Division of Hearings and Appeals that the Division does not possess equitable powers. *See, e.g., Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977)*. The Division of Hearings and Appeals must limit its review to the regulatory framework set forth in statutes, federal regulations, administrative code provisions and Department policy. Accordingly, the Division of Hearings and Appeals does not have authority under law to perform “equity” in the manner sought.

NOTE: Petitioner’s provider will not receive a copy of this Decision, Petitioner may provide a copy of this Decision to the provider.

CONCLUSIONS OF LAW

That the evidence does not demonstrate the approval criteria for upper partial dentures is met.

THEREFORE, it is

ORDERED

That this appeal 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 Milwaukee,
Wisconsin, this 7th day of April, 2014

\sDavid D. Fleming
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 April 7, 2014.

Division of Health Care Access and Accountability