



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MNP/155087

PRELIMINARY RECITALS

Pursuant to a petition filed January 24, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on March 03, 2014, at Appleton, Wisconsin.

The issue for determination is whether the Department erred in its non-payment for petitioner's chemotherapy bills from [REDACTED] [REDACTED] [REDACTED] and [REDACTED] in the amounts of \$17,720.75 and \$5,401.25.

There appeared at that time and place 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: Appearance in writing only.

Division of Health Care Access and Accountability

Madison, WI

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Outagamie County. She was enrolled in BadgerCare.
2. Petitioner underwent a mastectomy in November 2012 and subsequent chemotherapy treatment.

3. The provider submitted for payment of the chemotherapy treatment and related services.
4. The reimbursement was denied as a non-covered service.

DISCUSSION

The BadgerCare+ Basic Plan was implemented July 1, 2010, as a self-funded plan intended to provide BadgerCare+ Core Waitlist members with access to limited health care benefits until space became available in the BadgerCare+ Core Plan. The BadgerCare+ Basic statute, §49.67, states that the administrative and benefit costs provided under the Basic Plan must be paid by premiums charged to members. Petitioner was enrolled in the basic plan at the end of 2012 and the beginning of 2013 when the pertinent facts of this case occurred.

The Department explained in its written submission that under the BC Basic plan in which petitioner was enrolled, physician-administered drugs are not covered. This is correct based on my review of covered services under this limited program. See DHS, *Welcome to the BadgerCare Plus Basic Plan*, Document # P-00148 (July 2011) at p.3.

Petitioner explained that the provider informed her that the treatment would be covered. It appears that this logically follows at the provider undertook very costly treatments without any payment – only submitting the claims to ForwardHealth.

I note that the BadgerCare Handbook references a scenario in which a non-covered service is completed and the provider seeks payment from the member:

Conditions That Must Be Met

A member may request a noncovered service, a covered service for which PA was denied (or modified), or a service that is not covered under the member's limited benefit category. The charge for the service may be collected from the member if the following conditions are met *prior* to the delivery of that service:

- The member accepts responsibility for payment.
- The provider and member make payment arrangements for the service.
Providers are strongly encouraged to obtain a *written* statement in advance documenting that the member has accepted responsibility for the payment of the service.

Furthermore, the service must be separate or distinct from a related, covered service. For example, a vision provider may provide a member with eyeglasses but then, upon the member's request, provide and charge the member for anti-glare coating, which is a noncovered service. Charging the member is permissible in this situation because the anti-glare coating is a separate service and can be added to the lenses at a later time.

I do not know whether petitioner agreed to be responsible for payment if ForwardHealth did not cover the treatments. But, she may want to consider this provision and her provider is likely aware of it as well.

CONCLUSIONS OF LAW

The refusal to pay for chemotherapy treatments was not error.

THEREFORE, it is

ORDERED

That this matter is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 9th day of April, 2014

\sJohn P. Tedesco
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 April 9, 2014.

Division of Health Care Access and Accountability