FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

AMENDED DECISION

BCS/155318

PRELIMINARY RECITALS

Pursuant to a petition filed February 05, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Dane County Department of Human Services in regard to Medical Assistance, a hearing was held on March 31, 2014, at Madison, Wisconsin. At the time of hearing there was no appearance by the Department or the county agency. Neither the Department nor the agency submitted a case summary or any exhibits in advance of the hearing. This ALJ proceeded with the hearing given the presence of petitioner and the interpreter provided at cost to the agency. At the time of the hearing, this ALJ obtained consent of the petitioner to contact the Department to attempt to obtain the position of the Department and any other critical information. Following the hearing, this ALJ, as well as staff from DHA, attempted to contact the Department regarding this case. The initial attempts to contact the Department occurred on April 8, 2014. At least three separate people at DHS were made aware of this matter and the opportunity for the Department to provide an argument in writing or some rebuttal to petitioner's position. Indeed, this ALJ wrote in an E-mail to Ms. [redacted] (Bureau of Benefits Management) with a copy to Ms. [redacted] (BEPS) that "[i]t would be quite helpful for me to have the Department's explanation of the reason the Department denied this claim." This ALJ made clear that a decision would be written by April 24 due to binding deadlines whether the Department elected to respond or not. The Department elected not to respond and affirmatively stated that it would "wait to hear what your decision is." This decision is, therefore, written without any input, explanation, or rebuttal at the Department's election.

This Decision was amended following the issuance of an initial decision. The decision was amended due to the discovery of additional information by DHA staff indicating that petitioner was actually not an enrollee of the BC+ Program but could have been eligible as a non-U.S. citizen.

The issue for determination is whether the Department erred in its denial of the claim for payment in the amount of $842 from Wisconsin Pathologists.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services

1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: No Appearance
Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:
John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Dane County.
2. Petitioner received services from Wisconsin Pathologists with a service date of 9/29/13. The bill for services was $842.
3. The provider submitted a claim for payment to the Medicaid program. The claim was for a biopsy test that was an emergency procedure. This was denied on 11/13/13.
4. Petitioner filed a timely request for hearing based on the provider's direct billing to petitioner for the full cost of the services.

DISCUSSION

The petitioner had a biopsy completed on September 29, 2013, by Wisconsin Pathologists. The Department denied payment of the claim but did not explain its decision in writing or appear at the hearing.

Under 8 USC 1611(b)(1)(A), certain non-US citizens are not eligible for MA except when those services are necessary for the treatment of an emergency medical condition. Federal regulation title 42 CFR § 440.255(c)(1) describes an emergency medical condition as follows:

A medical condition (including emergency labor and delivery) manifesting itself y acute symptoms of severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

- Placing the patient's health in serious jeopardy,
- Serious impairment to bodily functions, or
- Serious dysfunction of any bodily organ or part

Petitioner argued at hearing that this was an emergency procedure.

DHA repeatedly sought input from the Department even after the hearing. None was provided. Apparently, the Department believed that it did not have the time to prepare a detailed response. However, even a one sentence e-mail such as "petitioner was not enrolled in BC+ at time of service" or "biopsies are non-covered services" would have been considered and given me some idea what to consider in this case.

Petitioner was credible at hearing. The billing appears to be authentic and legitimate. I have no reason from the Department or any additional facts to rebut petitioner's argument. In the absence of some

position of the Department and additional facts, I cannot simply research this issue and guess why payment was denied.

CONCLUSIONS OF LAW

The Department must pay the claim as it has not articulated any reason prior to, during, or following the hearing, as to why the claim should have been denied.

THEREFORE, it is **ORDERED**

That this matter is remanded to the Department with instructions that within 10 days of the date of this decision it take all steps necessary to ensure that the Wisconsin Pathologists is reimbursed for the claim for an $842 tissue exam performed on the petitioner on September 29, 2013.

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 24th day of April, 2014

\s\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 24, 2014.

Dane County Department of Human Services
Division of Health Care Access and Accountability

State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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