

3. On or about December 19, 2013 Petitioner's provider submitted a prior authorization (PA) request for Medicaid payment for gastric bypass surgery. That request was denied and Petitioner notified of the denial by letter dated January 14, 2014. She timely appealed.
4. Petitioner is 56 years of age (12/4/57). She is 4'11" tall and her monthly weight and body mass index (BMI) values as reported for this request were as follows:

07/30/13	232.7	47
08/27/13	229.1	46.5
09/24/13	229.3	46.5
10/22/13	229.1	46.5
11/19/13	230.6	47
12/17/13	237.7	48

5. Petitioner's list of diagnosis is extensive and can be found at Exhibit # 3, a February 12, 2014 letter from the Department and authored by Dr. Richard M. Carr, MD, MS at page 1, paragraph 4. The comorbid conditions noted in the PA are diabetes and dyslipidemia.¹ Hypertension is also noted in her records.
6. The reason for the denial of Petitioner's request for gastric bypass was that she does not have a comorbid condition documented to be life threatening and that is not responsive to appropriate treatment.

DISCUSSION

Petitioner filed this hearing request to challenge a denial of her prior authorization for a gastric bypass. The Wisconsin Medical Assistance Program (WMAAP) covers this procedure through the prior authorization process only if there is a medical emergency. *Wis. Stat. § 49.46(2)(f)*. The current approval criteria for this procedure states as follows:

The approval criteria for PA requests for covered bariatric surgery procedures include all of the following:

- The member has a BMI 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.
- The member has been evaluated for adequacy of prior efforts to lose weight. If there have been no or inadequate prior dietary efforts, the member must undergo 6 months of a medically supervised weight reduction program. This is separate from and not satisfied by the dietician counseling required as part of the evaluation for bariatric surgery.

¹ **Dyslipidemia:** A disorder of lipoprotein metabolism, including lipoprotein overproduction or deficiency. Dyslipidemias may be manifested by elevation of the total [cholesterol](#), the "bad" low-density lipoprotein (LDL) cholesterol and the triglyceride concentrations, and a decrease in the "good" high-density lipoprotein (HDL) cholesterol concentration in the blood. <http://www.medterms.com/script/main/art.asp?articlekey=33979>

- The member has been free of illicit drug use and alcohol abuse or dependence for the 6 months prior to surgery.
- The member has been obese for at least 5 years.
- The member has had a medical evaluation from the member's primary care physician, assessing preoperative condition and surgical risk and finding the member to be an appropriate candidate.
- The member has received a preoperative evaluation by an experienced and knowledgeable multidisciplinary bariatric treatment team composed of health care providers with medical, nutritional, and psychological experience. This evaluation must include, at a minimum:
 - A complete history and physical examination, specifically evaluating for obesity-related comorbidities that would require preoperative management.
 - Evaluation for any correctable endocrinopathy that might contribute to obesity.
 - Psychological or psychiatric evaluation to determine appropriateness for surgery, including an evaluation of the stability of the member in terms of tolerating the operative procedure and postoperative sequelae, as well as the likelihood of the member participating in an ongoing weight management program following surgery.
 - For members receiving active treatment for a psychiatric disorder, an evaluation by his or her treatment provider prior to bariatric surgery. The treatment provider must clear the member for bariatric surgery.
 - At least three consecutive months of participation in a weight management program prior to the date of surgery, including dietary counseling, behavioral modification, and supervised exercise, in order to improve surgical outcomes, reduce the potential for surgical complications, and establish the candidate's ability to comply with post-operative medical care and dietary restrictions. A physician's summary letter is not sufficient documentation.
 - Agreement by the member to attend a medically supervised post-operative weight management program for a minimum of six months post surgery for the purpose of ongoing dietary, physical activity, behavioral/psychological, and medical education and monitoring.
- The member is 18 years of age or older and has completed growth.
- The member has not had bariatric surgery before or there is clear evidence of compliance with dietary modification and supervised exercise, including appropriate lifestyle changes, for at least two years.
- The bariatric center where the surgery will be performed has been approved by ASBS guidelines as a Center of Excellence and meet one of the following requirements:
 - The center has been certified by the American College of Surgeons as a Level 1 Bariatric Surgery Center.
 - The facility has been certified by the ASBS as a Bariatric Surgery Center of Excellence.

*See Online provider handbook found at:
<https://www.forwardhealth.wi.gov/WIPortal/Online%20Handbooks/Display/tabid/152/Default.aspx?ia=1&p=1&sa=50&s=3&c=638&nt=Bariatric+Surgery>*

Petitioner certainly has serious conditions that affect her health and quality of life; they do not, however, meet the requirement that there be a co-morbid condition. Her diabetes appears to be controlled and there is no indication of anti-lipid or high blood pressure medication. This request for bariatric surgery cannot, therefore, be approved. None of this means that Petitioner would not benefit from the procedure. Rather, the conclusion is that the Medicaid cannot pay for it under these circumstances. If circumstances change Petitioner may again file a request for bariatric surgery.

CONCLUSIONS OF LAW

That the evidence does not demonstrate that Petitioner meets the criteria necessary for Medicaid payment for gastric bypass surgery at this time.

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

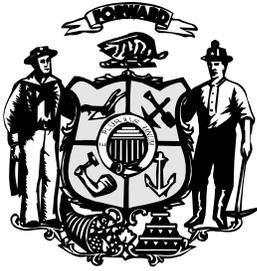
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

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 25th 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 25, 2014.

Division of Health Care Access and Accountability