



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:



DECISION

MPA/156109

PRELIMINARY RECITALS

Pursuant to a petition filed March 14, 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 [“DCHAA”] in regard to Medical Assistance [“MA”], a Hearing was held via telephone on April 24, 2014. At petitioner’s request a Hearing scheduled for May 8, 2014 was rescheduled.

The issue for determination is whether DCHAA was correct to deny MA Prior Authorization [“PA”] for an Allogeneic Hematopoietic Stem Cell Transplant for petitioner.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Richard M. Carr, MD, MS, DCHAA Physician Consultant [Dr. Carr did not appear at the April 24, 2014 Hearing but submitted letters dated March 24, 2014 and April 24, 2014.]

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

OTHER PERSONS PRESENT:

Dr. [Redacted], University of Wisconsin [“UW”] Hospital stem cell transplant physician
[Redacted], UW Hospital Registered Nurse [“RN”]

ADMINISTRATIVE LAW JUDGE:
 Sean P. Maloney
 Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]; 26 years old) is a resident of Dane County, Wisconsin.
2. Petitioner has a diagnosis of mycosis fungoides/cutaneous T cell lymphoma.
3. Petitioner's provider, University of Wisconsin Hospitals and Clinics of Madison, Wisconsin, requested PA for MA coverage of an Allogeneic Hematopoietic Stem Cell Transplant for petitioner. (PA # [REDACTED] dated March 12, 2014).
4. On March 13, 2014 DHCAA denied PA # [REDACTED]; DHCAA sent a letter to petitioner dated March 13, 2014 entitled *BadgerCare Plus Notice of Appeal Rights* informing her of this denial.
5. Medical research, studies, journals or treatises have concluded that, as a treatment for petitioner's condition, Allogeneic Hematopoietic Stem Cell Transplants require additional clinic trials and investigation to confirm efficacy and optimal timing and to answer other remaining questions.¹

DISCUSSION

As with any eligibility denial, the burden is on petitioner to show that she is eligible for the requested services. *Lavine v. Milne*, 424 U.S. 577, 583-584 (1976). Petitioner has failed to do so.

By law, MA pays only for medically necessary and appropriate health care services when provided to currently eligible MA recipients. Wis. Admin. Code § DHS 107.01(1) (February 2014); See also, Wis. Stat. §§ 49.46(2) & 49.47(6)(a) (2011-12). In order for a service to be *medically necessary* it must meet several specific requirements. Wis. Admin. Code § DHS 101.03(96m) (December 2008). One of the specific requirements for *medical necessity* is that the requested service "[i]s of proven medical value or usefulness and, consist with s. DHS 107.035, is not experimental in nature." Wis. Admin. Code § DHS 101.03(96m)(b)5. (December 2008).

A service that is considered experimental in nature is not a covered service under the MA program. Wis. Admin. Code § DHS 107.03(4) (February 2014). The definition of an *experimental in nature* is as follows:

“(1) DEFINITION. ‘Experimental in nature,’ as used in s. [DHS 107.03 \(4\)](#) and this section, means a service, procedure or treatment provided by a particular provider which the department has determined under sub. (2) not to be a proven and effective treatment for the condition for which it is intended or used.

¹ See, (1) *Allogeneic stem cell transplantation for advanced cutaneous T-cell lymphomas: a study from the French Society of Bone Marrow Transplantation and French Study Group on Cutaneous Lymphomas*, Stem Cell Transplantation, November 2103; (2) *Allogeneic Hematopoietic Cell Transplantation for Patients With Mycosis Fungoides and Sézary Syndrome: A Retrospective Analysis of the Lymphoma Working Party of the European Group for Blood and Marrow Transplantation*, Journal of Clinical Oncology, October 10, 2010 (Volume 28, Number 29); (3) *A Meta-analysis of Patients Receiving Allogeneic or o Hematopoietic Stem Cell Transplant in Mycosis Fungoides and Sézary Syndrome*, American Society for Blood and Marrow Transplantation [ASBMT] 2009.

(2) DEPARTMENTAL REVIEW. In assessing whether a service provided by a particular provider is experimental in nature, the department shall consider whether the service is a proven and effective treatment for the condition which it is intended or used, as evidenced by:

- (a) The current and historical judgment of the medical community as evidenced by medical research, studies, journals or treatises;
- (b) The extent to which medicare and private health insurers recognize and provide coverage for the service;
- (c) The current judgment of experts and specialists in the medical specialty area or areas in which the service is applicable or used; and
- (d) The judgment of the MA medical audit committee of the state medical society of Wisconsin or the judgment of any other committee which may be under contract with the department to perform health care services review within the meaning of s. [146.37](#), Stats.”

Wis. Admin. Code § DHS 107.035(1) & (2) (February 2014).

As required by law, this *Decision* is based exclusively on the evidence that is part of the record of this matter. Wis. Admin. Code §§ HA 3.09(1) & (4) (February 2013). Based on the evidence in the record of this matter it must be concluded that an Allogeneic Hematopoietic Stem Cell Transplant, as a treatment for petitioner’s condition, is experimental in nature because it is not a proven and effective treatment for petitioner’s condition. The current and historical judgment of the medical community as evidenced by medical research, studies, journals or treatises, is that, as a treatment for petitioner’s condition, Allogeneic Hematopoietic Stem Cell Transplants require additional clinic trials and investigation to confirm efficacy and optimal timing and to answer other remaining questions. Further, petitioner’s stem cell transplant physician did not testify that the requested Allogeneic Hematopoietic Stem Cell Transplant was a proven and effective treatment for petitioner’s condition (although he did testify that “there is no other curative option” and that the proposed treatment had a 40% 5 year survival rate.)

CONCLUSIONS OF LAW

For the reasons discussed above, DHCAA was correct to deny PA for an Allogeneic Hematopoietic Stem Cell Transplant for petitioner.

NOW, THEREFORE, it is

ORDERED

that the petition for review herein be and the same is hereby 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 27th day of May, 2014

\sSean P. Maloney
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 May 27, 2014.

Division of Health Care Access and Accountability