



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

MPA/156497

PRELIMINARY RECITALS

Pursuant to a petition filed March 27, 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 telephonic hearing was held on May 12, 2014, at Janesville, Wisconsin.

During that hearing, petitioner requested that the record be held open for documents to be submitted to the Division of Hearings and Appeals, and then for those documents to be sent to the Office of the Inspector General (OIG) for a reconsideration decision with an opportunity for a reply by Ms. [REDACTED]. The petitioner alleged that she was only able to use her old (2008) CPAP about 13% of the time, due to serious irritations to her eyes due to ongoing eye problems including the need for a recent February 5, 2014 corneal transplant.

This Administrative Law Judge (ALJ) sent a June 20, 2014 cover letter to Ms. Poppe-Lake at the Office of the Inspector General (OIG) with a copy of petitioner's submission of about 20 pages of medical documents which were received at DHA on June 6, 2014. In that letter, this ALJ requested that Ms. Poppe-Lake review the enclosed copy of letter, and submit a reconsideration summary to me at the Division of Hearings and Appeals by July 7, 2014 with a copy of that reconsideration summary letter to be sent to the petitioner. The petitioner requested and was granted until July 17, 2014 to submit to DHA any response to Ms. Poppe-Lake's reconsideration summary.

Ms. Poppe-Lake timely submitted her reconsideration to DHA and Ms. [REDACTED]. However, Ms. [REDACTED] failed to submit to DHA any response to that reconsideration by July 17, 2014.

The issue for determination is whether there is sufficient reliable evidence in the hearing record to determine whether the Department correctly denied the petitioner's prior authorization (PA) request for a CPAP and humidifier for that CPAP.

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: Dawn Poppe-Lake, RN consultant
Office of the Inspector General
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 37 year old resident of Rock County who receives Medical Assistance (MA).
2. The petitioner is diagnosed with obstructive sleep apnea, and MA paid for a CPAP machine for the petitioner during 2008.
3. On or about January 21, 2014, the petitioner's provider, Home Health United Home Medical Equipment, submitted a prior authorization (PA) request on behalf of the petitioner requesting a new CPAP and a heated humidifier for that CPAP. See Exhibit 2.
4. The Office of the Inspector General (OIG) sent a denial notice to the petitioner stating that the PA request for the CPAP and humidifier was denied for the following reasons: a) the CPAP and heated humidifier were ordered to replace a previous CPAP purchased in 2008. However, documentation concerning petitioner's usage of the CPAP during the period of November 8, 2013 to January 6, 2014 indicates 42 days of no use and 18 days of very limited use of that CPAP; b) the downloaded CPAP records indicate that petitioner used the CPAP only 13.3% of the time with an average daily use of only one hour and 6 minutes; c) a CPAP is expected to be used every night for about 6 to 8 hours for effective medical treatment for sleep apnea; and d) the requested new CPAP was denied due to the lack of effectiveness and appropriateness of the petitioner's usage time of her previous CPAP.
5. The petitioner's provider's notes indicated that petitioner did not return telephone calls and did not contact the provider or the respiratory therapist when requested to do so. The provider and the respiratory therapist wanted to review and discuss the petitioner's problems and limitations with her CPAP usage, and suggest options for increasing her CPAP usage.
6. During the hearing and while the record was held open, petitioner offered reliable testimony and evidence that she had serious ongoing eye problems. The petitioner provided 20 pages of medical evidence to establish medical problems with her eyes. However, that documentation did not establish that petitioner's serious irritations to her eye (including the February 5, 2014 corneal transplant) prevented her from using the old CPAP more than 13% of the time. See above Preliminary Recitals.
7. OIG consultant Dawn Poppe-Lake sent a July 1, 2014 reconsideration to DHA and petitioner which recommended the following: a) Based upon petitioner's documented eye problems, petitioner should send a new PA request to OIG requesting the CPAP and humidifier. However, the new PA submission should include an explanation as to how the petitioner (with the assistance of her provider and respiratory therapist) will promote the petitioner being able to use a new CPAP at least 6 hours per night even with her ongoing eye problems; b) petitioner needs to

contact her provider and respiratory therapist to discuss how she can increase her CPAP usage to at least 6 hours per night. See Finding of Fact #5 above.

8. The petitioner failed to submit to DHA any response to OIG's reconsideration by July 17, 2014 or even by the date of this decision.

CONCLUSIONS OF LAW

1. There is insufficient reliable evidence in the hearing record to determine whether the Department correctly denied the petitioner's prior authorization (PA) request for a new CPAP and humidifier for that CPAP.
2. After consulting with her provider and respiratory therapist, petitioner should submit to OIG a new PA request for a new CPAP and humidifier, but include an explanation as to how the petitioner (with the assistance of her provider and respiratory therapist) will assist the petitioner being able to use a new CPAP at least 6 hours per night even with her ongoing eye problems (Therapy Data Summary – CPAP usage compliance summary).
3. Once the completed new PA (with explanation of how petitioner will increase her CPAP usage) is received at OIG, then OIG will issue a new notice to petitioner explaining whether it is approving, modifying, or denying that new PA request. If that new PA is denied or modified, the petitioner may wish to submit a new appeal to DHA if petitioner wants to contest that negative action by OIG.

THEREFORE, it is

ORDERED

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 21st day of July, 2014

\sGary M. Wolkstein
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 July 21, 2014.

Division of Health Care Access and Accountability