



**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

DECISION

HMO/156729

PRELIMINARY RECITALS

Pursuant to a petition filed April 09, 2014, under Wis. Stat. § 49.45(5)(a), 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 September 29, 2014, at Darlington, Wisconsin.

The issue for determination is whether the Department erred in its denial of the PA request for bilateral mastectomies.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Lucy Miller, Nurse Consultant
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 is a resident of Lafayette County.
2. Petitioner has a diagnosis of gynecomastia and hypogonadism. Petitioner has testicular implants and receives testosterone injections.

3. Petitioner is a member of an HMO through Group Health Cooperative of Eau Claire.
4. The HMO denied the PA request for bilateral mastectomies on the basis that petitioner had not established that he meets the criteria for such surgery.
5. Petitioner filed a timely appeal.

DISCUSSION

Under the discretion allowed by Wis. Stat. §49.45(9), the Department now requires MA recipients to participate in HMOs. Wis. Admin. Code, §DHS 104.05(2)(a). MA recipients enrolled in HMOs must receive medical services from the HMOs' providers, except for referrals or emergencies. Wis. Admin. Code §DHS 104.05(3).

The criteria for approval by a managed care program contracted with the DHS are the same as the general MA criteria. See, Wis. Admin. Code, §DHS 104.05(3), which states that HMO enrollees shall obtain services "paid for by MA" from the HMO's providers. The department must contract with the HMO concerning the specifics of the plan and coverage. Wis. Admin. Code, §DHS 104.05(1).

If the enrollee disagrees with any aspect of service delivery provided or arranged by the HMO, the recipient may file a grievance with the Department or appeal to the Division of Hearings and Appeals.

Just as with regular MA, when the Department denies a grievance from an HMO recipient, the recipient can appeal the department's denial within 45 days. Wis. Stat. § 49.45(5), Wis. Admin. Code, §DHS 104.01(5)(a)3.

The criteria for approval of gynecomastia surgery are set forth in BC+ and Medicaid Prior Authorization Guideline Topic #12377. The guideline allows for the surgery in two categories. The first is when Klinefelter's Syndrome is diagnosed. At hearing, petitioner's mother thought this had been diagnosed and tried to find this in the exhibits. Petitioner was given 10 days to obtain such documentation of point to the documentation in the existing record. Several days after the hearing, petitioner's mother called this ALJ and informed him that she had contacted providers and that this syndrome had not been diagnosed.

The second circumstance in which the surgery is indicated is when several criteria are met. These include "true gynecomastia;" that the gynecomastia is classified as Grade II, III, or IV; that underlying causes have been addressed, and that other potential causes, including drugs, have been excluded. The Department concedes that these have been met. The criterion that remains disputed, however, is the one that requires that the condition be associated with breast pain, despite the use of analgesics. At hearing, petitioner's mother was given 10 days to submit additional documentation to support that this criterion has been met. No documentation was sent within the time given. I have reviewed the record including medical clinical notes submitted with the PA request and I agree that the pain that is required to establish medical necessity is simply not demonstrated in the documentation.

I also note that the HMO submitted a written response noting the presence of hypogonadism. The HMO correctly points out (see ex. #1) that hypogonadism is possibly a related hormonal cause of the condition. Department physician Lora Wiggins also mentioned this issue in her letter (see ex. #2). The criteria for this surgery require that all other potential causes be ruled out, including hypogonadism and hormone use. Given the testosterone use and the diagnosis, the surgery is not permitted.

CONCLUSIONS OF LAW

The Department did not err in its denial of the requested procedure.

THEREFORE, it is

ORDERED

That this appeal 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 10th day of October, 2014

\sJohn P. Tedesco
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 October 10, 2014.

Division of Health Care Access and Accountability