



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/157170

PRELIMINARY RECITALS

Pursuant to a petition filed April 28, 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 hearing was held on June 09, 2014, at Wausau, Wisconsin.

The issue for determination is whether the respondent correctly denied the petitioner's request for prior approval of a total hysterectomy.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Richard M. Carr, MD, MS
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 10 year old resident of Marathon County.

2. Petitioner was born prematurely, and has present diagnoses of hypotonia, scoliosis, and cerebral palsy with severe developmental delay, among others.
3. Petitioner is categorized in the category of non-ambulatory children with a diagnosis of profound cognitive disability with a near certain prognosis for no significant improvement in cognitive function.
4. A prior authorization request was submitted on the petitioner's behalf for a laparoscopic hysterectomy and appendectomy in early April, 2014. The respondent issued written notice of denial of this request on April 28, 2014. Exhibit 3. The petitioner timely appealed therefrom. Exhibit 1.
5. The respondent's basis for denial was that the medical necessity for these procedures was not established, because the request was made for the convenience of petitioner's family. Exhibit 4.

DISCUSSION

Any surgery that is to be reimbursed by MA must be *medically necessary*, whether it requires prior authorization or not:

DHS 107.01 General statement of coverage. (1) The department shall reimburse providers for medically necessary and appropriate health care services listed in ss. 49.46(2) and 49.47(6)(a), Stats., ...

Wis. Admin. Code §DHS 107.01(1).

DHS 101.03 Definitions. In this chapter and chs. DHS 102 to 108:

...

(96m) "Medically necessary" means a medical assistance service under ch. HFS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, ...
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses ...
 5. Is of proven medical value or usefulness ...
 6. Is not duplicative with respect to other services being provided to the recipient;
 7. Is not solely for the convenience of the recipient, the recipient's family or a provider;
 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code §DHS 101.03(96m).

To be reimbursed by MA, a hysterectomy must be medically necessary, whether or not it requires prior authorization. The petitioner's mother presented substantial testimony and documentary evidence establishing that the hysterectomy requested for her daughter is medically necessary. She further

successfully countered the respondent’s determination that the requested procedure was being sought for the greater convenience of petitioner’s caregivers. However, there are other procedural barriers present that are peculiar to procedures that result in sterilization.

The most obvious and insurmountable payment barrier here is the prohibition against MA payment for a sterilization procedure performed on a person under the age of 21:

DHS 107.06 Physician services.

...

(5) NON-COVERED SERVICES. The following services are not covered services:

...

(p) Sterilization of a mentally incompetent or institutionalized person, or of a person who is less than 21 years of age;

...

Wis. Admin. Code §DHS 107.06(5)(p). See in accord the federal MA rule, 42 C.F.R. §441.250-253(a).

There is no dispute that the petitioner is less than 21 years of age. Although sterilization was probably not the primary purpose for this hysterectomy, the above rule does not contain an exception for a sterilization procedure with a different primary purpose. Such exceptions are sometimes available for patients who are age 21 or older. Again, that is not the case here, and the rule has the force of law. I cannot deviate from it. Thus, the respondent’s prior authorization denial for the hysterectomy is upheld.

CONCLUSIONS OF LAW

The respondent correctly denied prior authorization approval for the petitioner’s hysterectomy, as she is under the age of 21.

NOW, THEREFORE, it is ORDERED

That the petition herein be 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.

\sPeter McCombs
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