FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

[redacted]

DECISION

MPA/157195

PRELIMINARY RECITALS

Pursuant to a petition filed April 24, 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 June 10, 2014.

The issue for determination is whether it was correct for DHCAA to deny Prior Authorization ["PA"] for MA payment for Magnetic Resonance Imaging ["MRI"] of the wrist (without contrast) for petitioner.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Robert Derendinger, RN, BSN
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

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

FINDINGS OF FACT

1. Petitioner (34 years old) is a resident of Marathon County, Wisconsin.

2. On March 4, 2014 petitioner's provider, [redacted], performed of an MRI of petitioner's wrist (without contrast).

3. On March 25, 2014 petitioner's provider, [redacted], requested PA (PA #'s [redacted] & [redacted]; MedSolutions case file PA #'s [redacted] & [redacted] for MA coverage of an MRI of the wrist (without contrast) for petitioner.

4. DCHAA denied PA #'s [redacted] & [redacted]; DCHAA sent a letter to petitioner dated March 25, 2014 and March 27, 2014 (both entitled *BadgerCare Plus Notice of Appeal Rights*) informing him of the denial.

DISCUSSION

Both the Wisconsin Administrative Code and written policy are very clear, in several places, that, if PA is not requested and obtained before a service requiring PA is provided, reimbursement shall not be made. Wis. Admin. Code § DHS 107.02(3)(c) (February 2014); See also, Wis. Admin. Code §§ DHS 106.03(4)(intro.) (January 2014), 107.02(2)(h) & 107.03(9) (February 2014), *WMAP Provider Handbook* (WMAP Handbook) Part A Section VIII-C (page A8-001; issued 07/93) & Part A Appendix 15, #2 (page A11-041 #2; issued 12/92); additionally see, Wis. Admin. Code §§ DHS 107.02(1)(a), 107.02(2)(intro.), 107.02(2)(a), 107.02(3)(e)9. & 107.02(3)(i)2.c. (February 2014). It follows that DCHAA was correct not to approve PA in this case.

The Wisconsin Administrative Code does allow several exceptions to the requirement that PA must be requested and obtained before a service requiring PA is provided. First, reimbursement may be made in extraordinary circumstances such as emergency cases where the department has given verbal authorization for the service. Wis. Admin. Code §§ DHS 107.02(3)(c) & 107.03(9) (February 2014). Additionally, reimbursement may be made in the following three circumstances: (1) if a denial of PA is rescinded in writing by DHCAA or overruled by an administrative or judicial order; (2) where the service was provided before the recipient became eligible for MA and the provider applies to and receives from DHCAA retroactive authorization for the service; and, (3) where time is of the essence in providing a service which requires PA, and verbal authorization is obtained by the provider from DHCAA's medical consultant or designee. Wis. Admin. Code § DHS 106.03(4) (January 2014); See also, WMAP Handbook Part A Section VIII-C (page A8-001; issued 07/93) & Part A Appendix 15 (page A11-041 #2; issued 12/92).

To ensure payments for claims for verbally authorized services, the provider must retain records which show the time and date of the authorization and the identity of the individual who gave the authorization, and must follow-up with a written authorization request form attaching documentation pertinent to the verbal authorization. Wis. Admin. Code § DHS 106.03(4)(c) (January 2014). Verbal authorization is only allowed in extraordinary circumstances such as emergency cases or where time is of the essence in providing a service. Wis. Admin. Code §§ DHS 107.02(3)(c) & 107.03(9) (February 2014); Wis. Admin. Code § DHS 106.03(4) (January 2014).

Petitioner does not claim that he meets any of the above exceptions.

In addition to the exceptions allowed by the Wisconsin Administrative Code (discussed above), DHCAA written policy allows for backdating of a PA in some circumstances as follows:

"In general, the grant date for prior authorization requests is the date of adjudication of a request by the analyst or consultant. Where the service is identified as urgent in character, backdating to the date the request is received at

EDS may be appropriate. In cases where the prior authorization was returned once, or several times, the request may be backdated to the original date the request was first received at EDS. When an earlier prior authorization was denied and a new prior authorization request is submitted with information to justify approval, backdating may be allowed to the first EDS receipt date of the original denied prior authorization request."

WMAP Handbook Part A Section VIII-F (page A8-005; issued 07/93).

All of these written policy exceptions grant backdating only to the date of receipt of a PA request. In this case PA was received by DCHAA after the date the MRI was performed on petitioner. Thus, none of these exceptions could be construed to provide coverage for the services petitioner received.

Petitioner should note that the Wisconsin Administrative Code makes abundantly clear that the provider is solely responsible for the timeliness of PA requests. Wis. Admin. Code § DHS 106.02(9)(e)1. (January 2014). When a service must be authorized in order to be covered, the recipient may not be held liable by the certified provider unless the PA was denied and the recipient was informed of the recipient's personal liability before provision of the service. In that case the recipient may request a fair hearing. Negligence on the part of the certified provider in the PA process shall not result in recipient liability. Wis. Admin. Code § DHS 104.01(12)(c) (December 2008).[1]

DHCAA written policy states as follows:

"**Provider Responsibility**
Providers are solely responsible for obtaining prior authorization. If a provider renders a service which requires prior authorization without first obtaining that authorization, the provider is responsible for the cost of the service and will not be reimbursed for the service through the WMAP, except in the case of provider or recipient retroactive eligibility."

WMAP Handbook Part A Section VIII-C (page A8-001; issued 07/93) (**bold** in original).

"Providers are solely responsible for obtaining prior authorization, before the delivery of service. The provider may not bill the recipient because of his/her failure to seek prior authorization.

If a provider renders a service which requires prior authorization, without first obtaining authorization, the provider is responsible for the cost of the service. ***NOTE:*** Exceptions are the provision of services that require prior authorization, but were performed without prior authorization as an emergency service, and in cases of provider/recipient retroactive eligibility."

WMAP Handbook Part A, Appendix 15 (page A11-041 #2; issued 12/92) (underline and ***bold italics*** in original)

CONCLUSIONS OF LAW

For the reasons explained above, DCHAA was correct not to approve reimbursement by MA for the MRI requested in PA #'s [redacted] and [redacted].

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[1] For example, if a provider does not inform a recipient that a procedure or service requires PA, and performs the service before submitting a PA request or receiving an approval and then submits a claim for services rendered which is rejected, the recipient may not be held liable. Wis. Admin. Code § DHS 104.01(12)(c) (December 2008)Note.

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 23rd day of June, 2014

\s\sSean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals

State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: http://dha.state.wi.us

The preceding decision was sent to the following parties on June 23, 2014.

Division of Health Care Access and Accountability

State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

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