



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

REHEARING
DECISION
MPA/157449

PRELIMINARY RECITALS

Pursuant to a petition filed May 06, 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 rehearing was held on August 11, 2014, at Eagle River, Wisconsin. The petitioner did not appear for her June 18, 2014 hearing and her appeal was dismissed as abandoned. The petitioner requested a rehearing, and that rehearing was granted due to good cause.

The issues for determination are: a) whether the Department correctly denied petitioner's prior authorization (PA) request for a PET (positron emission tomography) scan; and b) whether the petitioner may be held financially liable for that PET scan.

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: Robert Derendinger, RN consultant
Division of Health Care Access and Accountability
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 58 year old resident of Vilas County who is certified for MA.

2. The petitioner is diagnosed with recurrent extensive stage small cell lung cancer.
3. A PET scan was completed on January 30, 2014 to evaluate the extent of petitioner's lung cancer and any possible recurrence. A follow-up chest CT was complete on March 11, 2014.
4. The Marshfield Clinic went ahead and provided that March 21, 2014 PET scan for the petitioner prior to the submission of any prior authorization request to DHCAA for approval.
5. On or about April 1, 2014, the petitioner's oncologist, Dr. [REDACTED] [REDACTED] of the Marshfield Clinic in [REDACTED], submitted a prior authorization (PA) on behalf of petitioner for approval of a PET scan of the petitioner's skull base to mid-thigh due primarily to assess the avidity (aggressiveness) of a left lower lobe lung nodule regarding any possible recurrence of small cell lung cancer.
6. DHCAA did not provide verbal or written approval of the PA request for such PET scan.
7. On May 16, 2014, the Division of Health Care Access and Accountability (Division) sent a notice to petitioner which denied petitioner's request for a PET scan due to the provider's failure to establish the medical necessity of the requested procedure or to establish with clinical evidence that petitioner met the criteria for approval of the requested PET scan.
8. In its June 5, 2014 detailed summary, DHCAA provided the following summary statement with attachments to establish why it denied the petitioner's PA request for a March 21, 2014 PET scan: a) that petitioner's provider did not submit clinical information that petitioner's PET scan met the oncology guidelines to establish that the PET scan was appropriate and medically necessary; b) the provider did not establish why a new March 21, 2014 PET scan was necessary just 7 weeks after her prior January 30, 2014 PET scan; c) a repeat PET scan is not medically necessary in the absence of signs or symptoms of recurrent disease; d) it is unclear why petitioner's previous CT and PET imaging were insufficient to determine whether or not the nodule could be biopsied; and e) that the petitioner may not be held liable by the certified provider because in this case because the PET scan was provided on March 21, 2014, without verbal or written approval of the provider's late April 1, 2014 PA submission. See Exhibit 1.

DISCUSSION

Medical assistance covers physician-prescribed diagnostic services if they are consistent with good medical practices. Wis. Adm. Code, §§ DHS 107.06(1) and 107.25. In an effort to ensure that CT, MRI, and **PET scans** are consistent with good medical practice, the Division of Health Care Access and Accountability requires prior authorization before paying for them. It announced this requirement to providers in October 2010 through *MA Update*, #2010-92.

The petitioner requested a PET scan to investigate primarily the avidity (aggressiveness) in a left lower lobe lung nodule. The petitioner had a prior PET scan on January 30, 2014 and a follow-up chest CT scan on March 11, 2014. The Division denied the petitioner's PA request for a second PET scan on March 21, 2014 for the reasons set forth in Finding of Fact # 8 above.

Both the Wisconsin Administrative Code and written policy are very clear, in several places, that, if a prior authorization (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); See also, Wis. Admin. Code §§ DHS 106.03(4)(intro.), 107.02(2)(h) & 107.03(9) (August 2006), *WMAP Provider Handbook* (WMAP Handbook) Part A Section VIII-C (page A8-001) & Part A Appendix 15 (page A11-041 #2); 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..

The Wisconsin Administrative Code does allow several exceptions to the requirement that the 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). 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 DHCF 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 § 106.03(4); See also, WMAP Handbook Part A Section VIII-C (page A8-001) & Part A Appendix 15 (page A11-041 #2).

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). 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); Wis. Admin. Code § 106.03(4). In the instant case, the petitioner did not claim that he meets any of the above exceptions.

In the instant case, the record confirms that petitioner does not meet any of the above exceptions, and DHCAA correctly denied MA payment for the March 21, 2014 PET scan procedure. 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 Forward Health 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 Forward Health. 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 Forward Health receipt date of the original denied prior authorization request."
 WMAP Handbook Part A Section VIII-F (page A8-005).

In the instant case, the PA request was received by DHCAA on April 2, 2014, but the PET scan was performed on March 21, 2014, almost two weeks prior to the PA submission. DHCAA denied the PA request on May 16, 2014. None of the above exceptions could be construed to provide coverage for the March 21, 2014 PET scan.

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. When a service must be authorized by DHCF in order to be covered, **the recipient may not be held liable by the certified provider unless the prior authorization was denied by DHCAA 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 prior authorization process shall not result in recipient liability. Wis. Admin. Code DHS § 104.01(12)(c).

“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.” In this case, petitioner could not have been notified of his personal liability for the services because the PET scan was performed on March 21, 2014, and DHCAA did not even deny the PA request until May 16, 2014 (almost two months after the PET scan was performed).

WMAP Handbook Part A, Appendix 15 (page A11-041 #2)

CONCLUSIONS OF LAW

1. The Division of Health Care Access and Accountability correctly denied petitioner’s prior authorization (PA) request for a March 21, 2014 PET scan.
2. The petitioner may not be held liable for that PET scan by the provider pursuant to Wis. Admin. Code § DHS 106.02(9)(e)1 and DHS § 104.01(12)(c).

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 8th day of September, 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 September 8, 2014.

Division of Health Care Access and Accountability