



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MPA/157684

PRELIMINARY RECITALS

Pursuant to a petition filed May 13, 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 17, 2014, at Racine, Wisconsin.

The issue for determination is whether the agency properly denied the Petitioner’s PA request for orthopedic shoes.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Pamela Hoffman

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Racine County.

2. Petitioner has a diagnosis of diabetic neuropathy and is recover from infection and charcot foot on his left foot. He has hammer toes on his right foot. He has left ankle instability due to an old fracture.
3. On April 4, 2014, a PA request was submitted by Hanger Prosthetics on behalf of the Petitioner requesting the Aetrex X521 shoe and custom molded multi-density inserts.
4. The Petitioner meets the criteria for reimbursement of orthopedic shoes and foot orthotics from the Medicaid program.
5. On April 15, 2014, the agency denied the PA request because the requested orthotics to not meet the definition of durable medical equipment (DME).

DISCUSSION

The agency may only reimburse providers for medically necessary and appropriate health care services and equipment listed in Wis. Stat. §§ 49.46(2) and 49.47(6)(a), as implemented by Wis. Admin. Code, Ch. DHS 107. Some services and equipment are covered if a prior authorization request is submitted and approved by the DHCAA in advance of receiving the service. Finally, some services and equipment are never covered by the MA program. The requested Aetrex X521 shoes with orthotics in this case is not covered by the MA program per Wis. Admin. Code § DHS 107.24.

The agency asserts that the shoes are athletic shoes and are not items of durable medical equipment, so the agency was therefore unable to approve the requested item.

Orthopedic shoes are defined at §DHS 107.24(2)(c)2 as “any shoes attached to a brace for prosthesis; mismatched shoes involving a difference of a full size or more; or shoes that are modified to take into account discrepancy in limb length or a rigid foot deformation. Arch supports are not considered a brace. Examples of orthopedic or corrective shoes are supinator and pronator shoes, surgical shoes for braces, and custom-molded shoes.”

The requested orthotics were denied because the shoes with which they were paired are not orthopedic shoes. They are not considered primarily medical in nature because they can be purchased by anybody for any reason. Although petitioner's doctor prescribes extra depth shoes, these particular shoes do not meet the definition of orthopedic shoes. Though I understand the Petitioner’s arguments in favor of the requested shoes, I am required to apply the regulations as they are written. Therefore, I must conclude that the agency properly denied the PA request. As noted by the agency, the Petitioner is eligible for orthopedic shoes but they must meet the definition to be covered.

CONCLUSIONS OF LAW

The agency properly denied the PA request.

THEREFORE, it is

ORDERED

That the Petitioner’s appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative

Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 24th day of July, 2014

\sDebra Bursinger
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 24, 2014.

Division of Health Care Access and Accountability