



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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

|

[REDACTED]  
[REDACTED]

HMO/157828

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**PRELIMINARY RECITALS**

Pursuant to a petition filed May 22, 2014, under Wis. Stat. § 49.45(5)(a), and Wis. Admin. Code § HA 3.03, to review a decision by Petitioner’s HMNO and the Department of Health Services to deny gastric bypass surgery, a hearing was held on September 18, 2014, via telephone. Post hearing additional information was submitted and reviewed by both the HMO and the Department of Health Services

The issue for determination is whether the Division’s agent, an HMO, correctly denied a prior authorization request for gastric bypass surgery.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Petitioner's Representative:

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

Respondent:

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

By: Dr. Donna Davidoff, MD of UnitedHealth Care on behalf of  
Division of Health Care Access and Accountability  
Madison, WI

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Racine County.
2. A prior authorization request for gastric bypass surgery was submitted on Petitioner’s behalf to her MA/BadgerCare+ HMO in early 2014. On April 9, 2014, the HMO issued written notice of the denial of the request. That denial prompted the instant hearing request.

3. The HMO must follow the same standards for gastric bypass surgery approval as are used in “regular” fee-for-service MA. The HMO’s basis for denial was that Petitioner did not have a comorbid medical condition demonstrated to be unresponsive to appropriate treatment.
4. The petitioner, age 50 (DOB 7/1/64), has a Body Mass Index of about 47. She is noted to have diagnoses of obesity, diabetes type II controlled with oral medication, sleep apnea and back pain.

### DISCUSSION

The petitioner requests prior authorization for gastric bypass surgery to control her chronic obesity. Medical assistance covers this procedure through the prior authorization process only if there is a medical emergency. See Wis. Stat. § 49.46(2).

#### I. HISTORY OF APPROVAL GUIDELINES PRIOR TO DECEMBER, 2005.

Before 2001, authorization guidelines for the bypass procedure made approval nearly impossible, because the Division argued that the “medical emergency” requirement meant that the person’s weight had to pose an immediate threat to his or her life. It further contrarily required that if this threat did occur, no prior authorization was necessary. This created a procedure that required prior authorization, but could paradoxically only be authorized and paid without prior authorization.

In 2001, the *Prior Authorization Guidelines Manual*, §117.014.02, changed the approval criteria to the following more attainable requirements: (1) The patient must have acceptable operative risks and be able to participate in treatment and long-term follow-up; *and* (2) have either a Body Mass Index (BMI) of at least 40, or BMI from 35-39 plus a high-risk co-morbid medical condition clinically judged to be life-threatening, such as documented sleep apnea, Pickwickian syndrome, obesity-related cardiomyopathy, or severe diabetes mellitus.

Revised guidelines issued in July, 2005, and March, 2009, attempted to address the inconsistency between the 2001 criteria and other code requirements that more cost-effective means be tried first. They contained approval criteria related to BMI, co-morbid medical conditions that were unresponsive to medical management, documentation of previous supervised weight loss efforts, evaluation by a bariatric team, and attaining age 18.

#### II. PETITIONER DOES NOT SATISFY CURRENT REQUIREMENTS DUE TO LACK OF A COMORBID CONDITION.

The *Prior Authorization Guidelines Manual* was amended on December 7, 2005, and again in August, 2011. The change was to provision A1, related to BMI. That provision now reads:

The member has a body mass index greater than 35 with at least one documented high-risk, life-limiting comorbid medical conditions capable of producing a significant decrease in health status that are demonstrated to be unresponsive to appropriate treatment. There is evidence that significant weight loss can substantially improve the following comorbid conditions:

- Sleep apnea.
- Poorly controlled Diabetes Mellitus while compliant with appropriate medication regimen.
- Poorly controlled hypertension while compliant with appropriate medication regimen.
- Obesity-related cardiomyopathy.

See, *ForwardHealth Update*, No. 2011-44 (August, 2011)

Post hearing Petitioner submitted additional information that was evaluated by the HMO and Department. It did not change the original denial.

The reason that the Division denied Petitioner's request was that the current authorization guidelines require the documented presence of a life-threatening co-morbid condition. The criteria are drafted because of the mandate that gastric bypass is limited to medical emergencies. *Wis. Adm. Code, §HFS 107.06(4)(h)*. None of Petitioner's diagnoses other than morbid obesity are life-threatening conditions. This is a sufficient basis for denial of the surgery request.

Post hearing Petitioner submitted additional information that was evaluated by the HMO and Department. It did not change the original denial. The HMO found that the new information did not include clinical data as to diabetes control. While blood pressure was borderline in January, August and September 2014 physician visits, it was not at life threatening levels and Petitioner was not shown to be at maximum medication for high blood pressure. As for elevated blood pressure during an emergency department visit; the visit was for chest pain which can elevate blood pressure. The Department also reviewed the post hearing submission and affirmed the HMO findings.

The HMO properly applied the current guidelines here and denied this authorization request. Petitioner may submit a new authorization request if her condition deteriorates in the future.

### **CONCLUSIONS OF LAW**

The evidence offered on behalf of Petitioner does not, at this time, demonstrate that Petitioner meets the requirements for Medicaid payment for gastric bypass surgery.

**THEREFORE, it is**

**ORDERED**

That this 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 21st day of November, 2014

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\sDavid D. Fleming  
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 November 21, 2014.

Division of Health Care Access and Accountability  
Attorney Mary Pimmel