



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/158314

PRELIMINARY RECITALS

Pursuant to a petition filed June 09, 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 hearing was held on July 29, 2014, at Rhinelander, Wisconsin.

The issue for determination is whether the Department correctly denied the petitioner's prior authorization (PA) request for the brand name drug, Fosamax, due to not meeting Wisconsin Medicaid drug approval guidelines.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Lynn Radmer, R.Ph, pharmacy 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 an 83 year old resident of Oneida County who resides with her husband.
2. The petitioner has been enrolled in Wisconsin Senior Care since 2009.

3. The petitioner fractured her left hip during 2013. Her doctor sent her in January, 2014 to another doctor who suggested that petitioner take the brand-name drug, Fosamax for osteoporosis.
4. The petitioner's provider, Marshfield Clinic Pharmacy sent a May 14, 2014 prior authorization (PA) request on behalf of petitioner to the Division of Health Care Access and Accountability (DHCAA) requesting approval for a one year supply of the brand-name drug, Fosamax 70 mg (once weekly tablet), at a cost of \$1,357.44.
5. The generic, Alendronate 70mg tablet has an approximate cost of less than \$7 per month.
6. The Department sent a May 22, 2014 denial notice to the petitioner indicating that petitioner's PA request for Fosamax was denied due to not cost effective and not meeting Wisconsin Medicaid guidelines.
7. DHCAA pharmacy consultant sent a July 19, 2014 detailed summary to DHA and petitioner which provided the following reasons for the denial of Fosamax for the petitioner: a) the PA request did not meet Wisconsin Medicaid guidelines for approval; b) Forward Health Provider Update No. 2010-14 states that a recipient should attempt more than one generic equivalent drug before a brand medically necessary PA request may be approved by ForwardHealth. This petitioner has only attempted one generic manufacturer of alendronate 70 mg tablet manufactured by Northstar; c) the petitioner's trial of alendronate in which she experienced some adverse side effects was more than 3½ years ago (12/28/2010, 1/20/2011, 2/14/2011). Since 2/14/11, petitioner has not requested any drug for treatment of osteoporosis; d) some of the adverse effects alleged by petitioner (bleeding and aching gums) are not commonly associated with alendronate; e) it is unclear to determine the cause of the symptoms that petitioner experienced approximately 3½ years ago are caused by the alendronate; and e) some of the symptoms listed by petitioner like nausea, gas, bloating, and lower abdominal pain are very general symptoms that can have many causes, and also are common to many medications (such as antibiotics). See Exhibit 2.

DISCUSSION

The Division 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 Chapter DHS 107. Some services and equipment are covered if a prior authorization request is submitted and approved by the Division in advance of receiving the service. Finally, some services and equipment are never covered by the MA program. Here, the Division denied petitioner's prior authorization, relying, in part, on Wis. Admin. Code DHS § 107.02(3)(e).

Wisconsin Admin. Code § DHS 107.02(3)(e) provides that the Division, in reviewing prior authorization requests, must consider the following factors:

1. **The medical necessity of the service;**
2. The **appropriateness** of the service;
3. The cost of the service;

* * *

6. **The extent to which less expensive alternative services are available;**

* * *

8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including Medicare, or private insurance guidelines;

The key factor of those listed above is "medical necessity", which is defined in the administrative code as any MA service under chapter 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; . . .
 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; . . .

Wis. Admin. Code DHS § 101.03.

During the July 29, 2014 hearing and in her June 8, 2014 letter, petitioner alleged that more than 3½ years ago, she experienced some adverse side effects as a result of taking the generic, Alendronate for Osteoporosis. In her June 8th letter, petitioner explained that her doctor did not want for her take the generic, but instead prescribed the brand name, Fosamax, due to the allegation of fewer side effects.

However, in Finding of Fact #7 above, the Department's pharmacy consultant, Lynn Radmer, stated several convincing reasons for why State Medicaid policy guidelines were not met by petitioner for Medicaid to approve the brand-name drug, Fosamax, for the petitioner. See also detailed Exhibit 2. The petitioner was unable to submit any reliable evidence or testimony to refute those reasons for denial. Accordingly, based upon the above, I must conclude that the Department correctly denied the petitioner's prior authorization (PA) request for the brand name drug, Fosamax, due to not meeting Wisconsin Medicaid drug approval guidelines.

CONCLUSIONS OF LAW

The Department correctly denied the petitioner's prior authorization (PA) request for the brand name drug, Fosamax, due to not meeting Wisconsin Medicaid drug approval guidelines.

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.

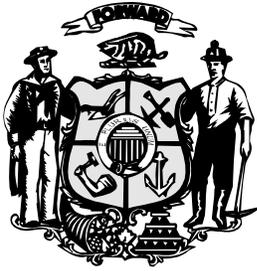
APPEAL TO COURT

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