



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/159323

PRELIMINARY RECITALS

Pursuant to a petition filed July 22, 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 September 25, 2014, at Kenosha, Wisconsin.

The issue for determination is whether the Department of Health Services, Division of Health Care Access and Accountability (DHS) correctly denied the Petitioner request for authorization of a diabetic shoe and custom molded inserts.

NOTE: The record was held open until October 17, 2014, to give the Petitioner an opportunity to submit photographs of her feet. Petitioner mailed in two photos that have been marked collectively as Exhibit 5.

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: OIG by letter

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

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. On June 3, 2014, ACTRA Rehabilitation Association (ACTRA), on behalf of the Petitioner, submitted a request for prior authorization of a diabetic shoe with three pairs of custom molded inserts at a cost of \$1,454,74. (Exhibit 4, pg. 4)
3. On July 1, 2014, DHS sent the Petitioner a letter advising her that her request for diabetic shoes and inserts was denied. (Exhibit 4, pgs. 20-23)
4. On July 1, 2014, DHS sent ACTRA notice of the same. (Exhibit 4, pgs. 24-25)
5. Petitioner suffers from diabetes and neuropathy that has been confirmed by EMG. Petitioner has “significant” callous formation from her current shoes. (Exhibit 2, letter from [REDACTED], Nurse Practitioner – [REDACTED] Health Care)

DISCUSSION

The Petitioner would like to have the diabetic shoes and inserts because she has developed callouses on both of her feet and is developing new callouses. The Petitioner also states that she needs the shoes to treat the neuropathic pain in her feet.

Wis. Admin. Code DHS §101.03(5) defines “durable medical equipment” as, “equipment which can withstand repeated use, is primarily used for medical purposes, is generally not useful to a person in the absence of illness or injury and is appropriate for use in the home.”

Per Wis. Admin. Code DHS §107.24(2)(c)(2), both orthopedic and corrective shoes are considered durable medical equipment and are a covered service:

(c) Categories of durable medical equipment. The following are categories of durable medical equipment covered by MA

...(2) Orthopedic or corrective shoes. These are 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...

Emphasis added

Under Wis. Admin. Code DHS §107.24(4), “Orthopedic or corrective shoes or foot orthoses shall be provided only for post-surgery conditions, gross deformities, or when attached to a brace or bar. These conditions must be described in the prior authorization request.” This provision does not allow coverage orthopedic/diabetic shoes to treat foot pain.

There is no assertion that the Petitioner needs the shoes for a post-surgical condition, and there is no indication in the record that the shoes will be connected to a brace or bar. One of the pictures submitted by the Petitioner in Exhibit 5 shows an irregular bump on the outside of Petitioner’s left foot, but it is difficult to see the callouses on her feet and there are no obvious deformities / ulcerations in her feet.

Based upon the foregoing, it is found that the Petitioner does not meet the authorization criteria for diabetic/orthotic shoes and inserts.

CONCLUSIONS OF LAW

DHS correctly denied the Petitioner's request for diabetic/orthotic shoes and inserts.

THEREFORE, it is

ORDERED

That the petition 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 22nd day of October, 2014.

\sMayumi M. Ishii
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 October 22, 2014.

Division of Health Care Access and Accountability