



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact
Redact
Redact

DECISION

HMO/159392

PRELIMINARY RECITALS

Pursuant to a petition filed July 26, 2014, under Wis. Stat. § 49.45(5)(a), and Wis. Admin. Code § HA 3.03, to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on September 04, 2014, at Juneau, Wisconsin. At the request of the parties, the record was held open for the submission of additional evidence by petitioner to DHS, and then a DHS reconsideration summary. DHS medical consultant, Dr. Redact, submitted an October 21, 2014 amended review (reconsideration). Petitioner's representative did not submit to DHA any response to the amended review.

The issue for determination is whether Redact Redact HMO correctly denied the petitioner's request for coverage of a second opinion consultation from an out of network pediatric neurologist provider because there are three other pediatric neurologists in Redact of HMO network.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact
Redact
Redact

Representative:

Redact
Redact

Respondent:

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

By: Written submissions by Melody Suthers

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 6 year old resident of Dodge County who resides with her family. She is certified for MA/BadgerCare Plus.
2. MA/BadgerCare Plus recipients in Dodge County must receive their care through an HMO, Redact Redact (Redact). The HMO must furnish the same benefits to the petitioner as regular, fee-for-service MA. The petitioner requested her HMO to approve a second opinion by an out of network pediatric neurologist, Dr. Redact, at Redact in Milwaukee on May 15, 2014. The reason for the requested second opinion was that petitioner's parents were dissatisfied with the care provided by their Redact HMO pediatric neurologist.
3. Redact HMO sent a May 13, 2014 letter to the petitioner stating that her request for coverage of an out of network second opinion was denied because this provider is not in her Redact network and there are three other in-plan pediatric neurologists who could provide a second opinion for the petitioner.
4. Petitioner's parents requested a reconsideration by the HMO.
5. Redact HMO sent a July 9, 2014 letter to the petitioner's parents stating that after reviewing the medical record in her request and Dr. Redact July 2, 2014 letter, the HMO affirmed that the original denial of the out of network referral was correct. The basis for the denial was the petitioner has three other pediatric neurologist plan providers who can provide care and second opinions for the petitioner (Drs. Redact).
6. The petitioner filed a grievance with the Wisconsin Department of Health Services (DHS).
7. DHS upheld the HMO's action by letter dated August 29, 2014. In that letter, DHS chief medical consultant, Dr. Redact, reviewed the medical records and documents, and upheld the HMO's denial of coverage for an out of network second opinion. Dr. Redact explained that because there are three other pediatric neurologists in the Redact HMO, the petitioner has not established the medical necessity to go outside of her provider network for a second opinion based upon BC/MA HMO rules.
8. The petitioner then filed the instant hearing request.
9. The petitioner provided some new information during the hearing and while the record was held open.
10. On October 21, 2014, Dr. Redact provided a very brief amended decision which indicated that after reviewing the clarifying information from September 15, 2014 and September 16, 2014 along with Redact response, DHS continues to uphold the HMO's denial.
11. The petitioner did not submit any response to the October 21, 2014 DHS amended decision.

DISCUSSION

Under the discretion allowed by Wis. Stat., §49.45(9), the Department now requires MA recipients to participate in HMOs. Wis. Adm. Code, §DHS 104.05(2)(a). MA recipients enrolled in HMOs must receive medical services from the HMOs' providers, except for referrals or emergencies. Adm. Code, §DHS 104.05(3).

The criteria for approval by a managed care program contracted with the DHCF are the same as the general MA criteria. See Adm. Code, §DHS 104.05(3), which states that **HMO enrollees shall obtain services "paid for by MA" from the HMO's providers.** If a recipient knowingly uses a provider

outside of her HMO for services, he/she is normally liable for those services. *Id.* The department must contract with the HMO concerning the specifics of the plan and coverage. Adm. Code, §DHS 104.05(1).

If the enrollee disagrees with any aspect of service delivery provided or arranged by the HMO, the recipient may file a grievance with the department or appeal to the Division of Hearings and Appeals. Just as with regular MA, when the department denies a grievance from an HMO recipient, the recipient can appeal the department's denial within 45 days. Wis. Stat., §49.45(5), Adm. Code, §DHS 104.01(5)(a)3.

MA services are covered if they are medically necessary. A service is medically necessary if it is "[r]equired to prevent, identify or treat a recipient's illness, injury or disability..." Adm. Code, §DHS 101.03(96m)(a).

In this case, the petitioner's parents were dissatisfied with the care provided by a **Redact** pediatric neurologist for **Redact**, and requested an exemption to obtain a second opinion from a non-HMO provider. However, the petitioner's parents did not establish with any reliable evidence why there was a medical necessity to consult with a pediatric neurologist at **Redact** in Milwaukee rather than consult with any one of the three other pediatric neurologists at **Redact** HMO. As explained by the above stated administrative code, MA recipients enrolled in HMOs must receive medical services from the HMOs' providers, except for referrals or emergencies. Adm. Code, §DHS 104.05(3). The petitioner's parents did not establish an emergency or that an outside referral was medically necessary. Accordingly, based upon the above, I must conclude that the HMO and Division correctly denied the petitioner's request for coverage of a second opinion consultation from an out of network pediatric neurologist provider because there are three other pediatric neurologist in her HMO network.

CONCLUSIONS OF LAW

The HMO and Division correctly denied the petitioner's request for coverage of a second opinion consultation from an out of network pediatric neurologist provider because there are three other pediatric neurologist in her HMO network pursuant to the Adm. Code, §DHS 104.05(3).

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 December, 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 December 8, 2014.

Division of Health Care Access and Accountability