



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MPA/159588

PRELIMINARY RECITALS

Pursuant to a petition filed August 01, 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 September 30, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the Department correctly denied the petitioner’s prior authorization (PA) request for an MRI (magnetic resonance imaging) on her left thigh with and without contrast.

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: Robert Derendinger, nurse 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 (CARES # ) is an 80 year old resident of Milwaukee County who is certified for MA. She is diagnosed with a mass as a lipoma (fatty growth) on her left thigh.

2. On July 17, 2014, petitioner was seen for complaints of a mass present on her left thigh. The Petitioner received an x ray of her left thigh, but not an ultrasound. The petitioner indicated that the mass was painful. It was noted that surgery was not planned for the petitioner.
3. On July 22, 2014, the petitioner's provider, Dr. [REDACTED], Orthopedic Surgery at Froedtert East Clinics, Milwaukee WI, requested approval from DHCAA for an MRI of the petitioner's left lower leg both without and with contrast. See Exhibit 2.
4. On that same day, July 22, 2014, the Division of Health Care Access and Accountability (Division) reviewed the PA request, and sent a notice to the petitioner denying her request for an MRI of her left thigh.
5. On July 25, 2014, the provider performed an MRI of the petitioner's left leg despite the denial from DHCAA regarding the requested MRI.
6. The provider did not timely notify the petitioner that her PA for the MRI had been denied prior to her July 25, 2014 MRI.
7. The reasons for the MRI denial were: a) the mass was poorly described in that size and whether fixed or not are not indicated in the case file; b) an ultrasound had not been completed; c) surgery was not planned for removal of the lipoma; and d) failure by the MA provider to obtain proper prior authorization shall not result in liability of the member for coverage without prior notification of the July 22, 104 denial decision to the petitioner prior to her July 25, 2014 MRI. See Exhibit 1.
8. The petitioner's MRI was performed on July 25, 2014, but the provider failed to obtain prior approval of that request before proceeding with the MRI, as the PA was denied on July 22, 2014. The provider did not establish a documented emergency and did not obtain prior verbal approval for the July 25, 2014 MRI procedure. The provider did not notify the petitioner of the July 22, 2014 denial of her PA request before she underwent the July 25, 2014 MRI of her left thigh.
9. Petitioner underwent surgery on August 18, 2014 for removal of the lipoma from her left thigh by Dr. [REDACTED]. See Exhibit 3.

DISCUSSION

Medical Assistance covers physician-prescribed diagnostic services if they are consistent with good medical practices. Wis. Adm. Code, §§ DHS 107.06(1) and 107.25. In an effort to ensure that CT, MRI, and PET scans are consistent with good medical practice, the Division of Health Care Access and Accountability requires prior authorization before paying for them. It announced this requirement to providers in October 2010 through *MA Update*, #2010-92.

The Department contended that it correctly denied the petitioner's PA request for MRI of her left thigh for the reasons set forth in Finding of Fact #7 above. However, petitioner refuted one of the reasons for denial (no surgery was planned) because petitioner underwent surgical removal of the lipoma from her left thigh on August 18, 2014 as indicated in Finding of Fact #9 above.

Furthermore, both the Wisconsin Administrative Code and written policy are very clear, in several places, that, if a prior authorization (PA) is not requested and **obtained before a service requiring PA is provided, reimbursement shall not be made.** Wis. Admin. Code § DHS 107.02(3)(c); See also, Wis. Admin. Code §§ DHS 106.03(4)(intro.), 107.02(2)(h) & 107.03(9), *WMAP Provider Handbook* (WMAP Handbook) Part A Section VIII-C (page A8-001) & Part A Appendix 15 (page A11-041 #2); additionally see, Wis. Admin. Code §§ DHS 107.02(1)(a), 107.02(2)(intro.), 107.02(2)(a), 107.02(3)(e)9. & 107.02(3)(i)2.c.. It follows that DHCAA was correct not to approve the PA request for reimbursement by MA of petitioner's MRI procedure performed because the provider failed to obtain approval of its July

22, 2014 PA request before proceeding with the MRI on July 25, 2014, and failed to timely notify petitioner of the PA denial prior to the July 25,2014 MRI.

Petitioner should note that the Wisconsin Administrative Code makes abundantly clear that the provider is **solely** responsible for the timeliness of PA requests. Wis. Admin. Code § DHS 106.02(9)(e)1. When a service must be authorized by DHCF in order to be covered, **the recipient may not be held liable by the certified provider unless the prior authorization was denied by DHCAA and the recipient was informed of the recipient's personal liability before provision of the service.** In that case the recipient may request a fair hearing. Negligence on the part of the certified provider in the prior authorization process shall not result in recipient liability. Wis. Admin. Code DHS § 104.01(12)(c).

“Providers are solely responsible for obtaining prior authorization, before the delivery of service. The provider may not bill the recipient because of his/her failure to seek prior authorization.

If a provider renders a service which requires prior authorization, without first obtaining authorization, the provider is responsible for the cost of the service. **NOTE:** Exceptions are the provision of services that require prior authorization, but were performed without prior authorization as an emergency service, and in cases of provider/recipient retroactive eligibility.” The provider did not establish any emergency service of the MRI was required.

WMAP Handbook Part A, Appendix 15 (page A11-041 #2)

CONCLUSIONS OF LAW

The Division correctly denied reimbursement for the petitioner’s PA request for the July 25, 2014 MRI because those services were performed by the MA provider prior to the approval of that PA request.

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 20th day of October, 2014

\sGary M. Wolkstein
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 20, 2014.

Division of Health Care Access and Accountability