



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MNP/159907

PRELIMINARY RECITALS

Pursuant to a petition filed August 15, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Division of Health Care Access and Accountability (DHCAA or Division) in regard to Medical Assistance (MA), a hearing was held on September 23, 2014, by telephone.

The issue for determination is whether the Division correctly declined to reimburse a pharmacy for the petitioner’s prescriptions for dextroamphetamine-amphetamine ER capsules furnished in November and December 2013.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

By: [REDACTED]

[REDACTED]

[REDACTED]

Respondent:

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

By written submission of Lisa Reese, Pharmacy Systems Spec.
Division of Health Care Access and Accountability
Madison, WI

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Manitowoc County.

2. The petitioner had prescriptions filled on four occasions between November 21 and December 31, 2013. He was not certified for MA at the time. His pharmacy submitted claims for these prescriptions during this timeframe, and they were denied in 2013 for lack of MA eligibility.
3. On January 2, 2014, the Social Security Administration electronically notified the Division that the petitioner had recently been found eligible for SSI benefits, retroactive to May 1, 2013. On approximately January 2, 2014, the Department issued written notice to the petitioner advising that he was now eligible for SSI-related MA, retroactive to May 1, 2013.
4. Upon receiving notification of retroactive eligibility, a recipient is supposed to ask his pharmacy provider to re-submit its claims to MA for payment.
5. The Division has no record that the petitioner's pharmacy re-submitted claims for the November/December 2013 prescriptions through July 2014.
6. Submission of a prior authorization request to the Division is required as a condition of payment of a claim for dextroamphetamine-amphetamine ER capsules. The Division did not receive a prior authorization request for this medication for the petitioner from May 1, 2013, through October 30, 2014.

DISCUSSION

Medical providers must submit claims "in accordance with the claims submission requirements, claim forms instructions and coding information provided by the department." Wis. Admin. Code § DHS 106.03(2). The Division must deny payment to any provider who fails to meet this requirement. Wis. Adm. Code § DHS 107.02(1)(a) and (2)(h). It is up to the petitioner and provider to prove that they have met the medical assistance requirements. In this case, it was not clear that the provider both (1) submitted a prior authorization request for the drug in question, and (2) re-submitted its claims after January 2, 2014 (date the petitioner learned of his retroactive MA eligibility).

The Division's denial of the pharmacy claims submitted in November and December 2013 was correct because the petitioner was not yet certified for MA at the time. Wis. Admin. Code § DHS 106.02(3). The petitioner asserts that the pharmacy made another attempt to submit the 2013 claims on January 15, 2014. However, the Division has no record of this submission. This Judge contacted the Division post-hearing to confirm that no claims were received in January 2014; the Division continues to maintain that it has no record of receiving them.

The Division argues that the provider had a 180 day window from January 2, 2014, in which to re-submit its November/December 2013 claims. The 180 day window expired July 2, 2014. Therefore, the Division refuses to consider the November/December 2013 claims, even if they were to be submitted after this hearing.

State code on this topic reads as follows:

(b)

1. To be considered for payment, a correct and complete claim or adjustment shall be received by the department's fiscal agent within 365 days after the date of the service except as provided in subd. 4. and par. (c). The department fiscal agent's response to any claim or adjustment received more than 365 days after the date of service shall constitute final department action with respect to payment of the claim or adjustment in question.

...

4. If a claim was originally denied or incorrectly paid because of an error on the recipient eligibility file, an incorrect HMO designation, an incorrect nursing home level of care authorization or nursing home patient liability amount, ... [N/A]

...

(c) The sole exceptions to the 365 day billing deadline are as follows:

1. If a claim was initially processed or paid and the department subsequently initiates an adjustment to increase a rate or payment or to correct an initial processing error...

2.

a. If a claim for payment under medicare has been filed with medicare within 365 days after the date of service, the department may pay a claim relating to the same service only if a correct and complete claim is received by the fiscal agent within 90 days after the disposition of the medicare claim;

b. If medicare or private health insurance reconsiders its initial payment and requests recoupment of a previous payment, the department may pay a correct and complete request for an adjustment which is received within 90 days after the notice of recoupment;

3. If a claim for payment cannot be filed in a timely manner due to a delay in the determination of a recipient's retroactive eligibility under s. 49.46 (1) (b), Stats., the department may pay a correct and complete claim only if the claim is received by the fiscal agent within 180 days after mailing of the backdated MA identification card to the recipient; and

4. The department may make a payment at any time in accordance with a court order or to carry out a hearing decision or department-initiated corrective action taken to resolve a dispute. To request payment the provider shall submit a correct and complete claim to the department's fiscal agent within 90 days after mailing of a notice by the department or the court of the court order, hearing decision or corrective action to the provider or recipient.

Wis. Admin. Code § DHS 106.03(3)(b)(c).

I do not read the code as narrowly as the Division's representative does. It appears to me that a provider gets 365 days to submit a claim, and then gets additional time (not less) if any of the circumstances in (c) above are present. The key phrase in the code at (c)3 is "if a claim for payment cannot be filed in a *timely manner* [due to the eligibility determination delay]." The "timely manner" is the 365 days. It makes no sense to say that a provider gets less time to submit a claim in a retroactive eligibility case than in any other MA case. Thus, I conclude that the provider could still submit the retroactive claims.

The other impediment to claim payment is the provider's failure to obtain prior authorization for dextroamphetamine-amphetamine ER capsules. The petitioner does not dispute that prior authorization was not obtained. However, a retroactive prior authorization document could still be submitted. The petitioner was given various and conflicting reasons for why a prior authorization form was needed. The Division's hearing response does not identify the reason for a prior authorization requirement in this case. To satisfy the petitioner's curiosity, this Judge viewed the Division's online MA pharmacy policy handbook at the ForwardHealth portal:

<https://www.forwardhealth.wi.gov/WIPortal/Tab/42/icscontent/provider/medicaid/pharmacy/resources.htm.spage#>. The portal contains a Preferred Drug List-Quick Reference. In the Quick Reference at page 12, the Division lists *amphetamine salt combo ER* with the codes "diagnosis restriction" and "non-

preferred product.” All stimulants, of which this drug is one, are diagnosis restricted. All “diagnosis restricted” drugs require prior authorization. For a “non-preferred product” claim to be successful, the claim must list a diagnosis code and there must be an approved prior authorization request (with the pharmacy using form *PA/PDL for Stimulants and Related Agents, F-11097 (12/12)*). I note that the handbook also contains this information:

The clinical criterion for approval of a PA request for a non-preferred stimulant is the member has experienced an unsatisfactory therapeutic response or experienced a clinically significant adverse reaction with at least two preferred stimulants.

ForwardHealth portal, Topic #16357.

Because an approved prior authorization request is required for the drug in question, and no such request has been filed with the Division, I cannot order payment of the contested claims at this time. The petitioner is free to contact his pharmacy regarding a new effort to obtain prior authorization and claim re-submission within 90 days of the date of this Decision. It would be advisable to attach a copy of this Decision to the prior authorization request.

CONCLUSIONS OF LAW

1. The petitioner’s pharmacy provider may submit retroactive claims for the November-December 2013 period to the Division within 90 days of the date of this Decision, per Wis. Admin. Code § DHS 106.03(3)(c)3 & 4.
2. Prior authorization is required as a condition of claim payment for dextroamphetamine-amphetamine ER capsules. The petitioner has not obtained that prior authorization, so payment of the contested claims cannot be ordered here.

THEREFORE, it is

ORDERED

That the petition is 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 21st day of November, 2014

\sNancy J. Gagnon
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

