



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

In the Matter of:

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

HMO/160572

PRELIMINARY RECITALS

Pursuant to a petition filed September 10, 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 [“DCHAA”] in regard to Medical Assistance [“MA”], a Hearing was held via telephone on October 28, 2014.

The issue for determination is whether it was correct for petitioner’s MA contracted Health Maintenance Organization [“HMO”] to deny funding for bariatric revision surgery for petitioner.

There appeared at that time via telephone 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: Lucy Miller, Registered Nurse [“RN”], Nurse Consultant
Division of Health Care Access And Accountability
1 West Wilson Street
P.O. Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (39 years old) is a resident of Fond Du Lac County, Wisconsin.

2. Petitioner is eligible for MA and is member of [REDACTED] [REDACTED] HMO.
3. Petitioner requested bariatric revision surgery from [REDACTED].
4. [REDACTED] denied petitioner's requested bariatric revision surgery.
5. Petitioner had bariatric surgery in 2006 with significant weight loss down to 180 pounds at her lowest; she became pregnant in 2011 and gained weight; after the birth she continued to gain weight; as of August 2014 her weight was approximately 295 pounds.

DISCUSSION

The Wisconsin Department of Health Services ["DHS"] may enter into contracts for MA services with HMOs. Wis. Admin. Code § DHS 104.05(1) (December 2008); see also, Wis. Stat. § 49.45(9) (2011-12). Services available to MA recipients must be identified in the provider's contract with DHS and must be made known to all enrollees. Wis. Admin. Code § DHS 104.05(4) (December 2008). With certain exceptions, all HMOs that contract with DHS must provide to enrollees all MA services that are covered services at the time the MA HMO contract becomes effective. Wis. Admin. Code § DHS 107.28(1)(a)1.intro. (February 2014); See also, Wis. Stat. § 49.46(2) (2011-12).

MA may only reimburse providers for medically necessary and appropriate health care services and equipment listed in sections 49.46(2) and 49.47(6)(a) of the Wisconsin Statutes, as implemented by chapter DHS 107 of the Wisconsin Administrative Code. Some services and equipment are covered if a request is submitted and approved in advance of receiving the service. Some services and equipment are never covered by the MA program.¹

If a person, such as petitioner, has already had bariatric surgery a second request for bariatric surgery can be approved only if there is clear evidence of compliance with dietary modification and supervised exercise, including appropriate lifestyle changes, for at least 2 years. *ForwardHealth Update*, August 2011, No. 2011-44, found online at: <https://www.forwardhealth.wi.gov/kw/pdf/2011-44.pdf>. The requested bariatric revision surgery in this case was denied because petitioner failed to meet this criterion. The evidence in the record of this matter is that petitioner has gained weight since her first bariatric surgery.

Petitioner testified that she had recently lost 15 pounds. Petitioner may have her provider make another request for bariatric surgery if she has clear evidence of compliance with dietary modification and supervised exercise, including appropriate lifestyle changes, for at least 2 years.

CONCLUSIONS OF LAW

For the reasons discussed above, it was correct for petitioner's MA contracted HMO to deny funding for bariatric revision surgery for petitioner.

THEREFORE, it is

¹ Section 49.46(2)(f) of the Wisconsin Statutes prohibits payment for gastric by-pass surgery unless it is performed because of a medical emergency as determined by DHS. Wis. Stat. § 49.46(2)(f) (2011-12); See also, Wis. Admin. Code § DHS 107.06(4)(h) (February 2014).

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 12th day of November, 2014

\sSean P. Maloney
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 12, 2014.

Division of Health Care Access and Accountability