



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

In the Matter of:

██████████
██████████
██████████

DECISION

MPA/160701

PRELIMINARY RECITALS

Pursuant to a petition filed September 17, 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 [“DCHAA”] in regard to Medical Assistance [“MA”], a Hearing was held via telephone on November 12, 2014.

The issue for determination is whether petitioner is eligible for payment by the MA program for Laparoscopic Gastric Bypass/Roux-En-Y surgery.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████
██████████
██████████

Respondent:

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

BY: Lora Wiggins, MD, Chief Medical Officer, DCHAA
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (45 years old) is a resident of Clark County, Wisconsin.

2. Petitioner's provider ([REDACTED] in [REDACTED], Wisconsin) requested Prior Authorization ["PA"] for MA coverage of Laparoscopic Gastric Bypass/Roux-En-Y surgery for petitioner by a *Prior Authorization Request Form (PA/RF)* dated July 15, 2014 (PA # [REDACTED]) at a total cost of \$11,475.00.
3. DCHAA denied PA request # [REDACTED] and sent a letter to petitioner dated August 12, 2014 and entitled *BadgerCare Plus Notice of Appeal Rights* informing her of the denial.
4. As of July 2014 petitioner was 5 feet 3.31 inches tall, weighed 303.1 pounds (she states she is now down to 282 pounds), and had a Body Mass Index ["BMI"] of 53.2 (as of August 2014 it was 50.4).
5. Petitioner has a diagnoses of morbid obesity, uncontrolled diabetes mellitus type 2 (diagnosed in late 2004 and uncontrolled since January 18, 2011), obstructive sleep apnea (she uses a CPAP), hypertension, depression, asthma, knee pain, back pain, and skin problems.
6. Although petitioner is taking 3 oral medications (with escalating doses) for her diabetes she is not taking insulin; she has been asked by medical professionals to consider insulin for her diabetes on multiple occasions since 2008 but has declined; she is not taking insulin because she refuses to do so; in a handwritten letter dated November 6, 2014 she states: "I have seen some problems I have seen people get Air bubble and end up going to the hospital. Plus I have seen some people take too much and go into diabetic shock. Plus I'm allergic [sic] to bee's [sic] and I can't even give my self [sic] shots for that. Plus when people try to take blood from me I can't look."
7. In a handwritten letter dated November 6, 2014 petitioner states that her sleep apnea "is doing better from when I first started but I'm still up and down a bit."

DISCUSSION

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 PA request is submitted and approve in advance of receiving the service. Some services and equipment are never covered by the MA program.

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 Wisconsin Department of Health Services ["DHS"]. Wis. Stat. § 49.46(2)(f) (2011-12); See also, Wis. Admin. Code § DHS 107.06(4)(h) (February 2014).

DHS has interpreted the *medical emergency* requirement to include several criteria, one of which is that the person must have at least one documented high-risk, life-limiting comorbid medical condition capable of producing a significant decrease in health status that is demonstrated to be unresponsive to appropriate treatment. *ForwardHealth Update*, August 2011, No. 2011-44, found online at: <https://www.forwardhealth.wi.gov/kw/pdf/2011-44.pdf> .

The evidence in the record of this matter is that petitioner does not have at least one documented high-risk, life-limiting comorbid medical condition capable of producing a significant decrease in health status that is demonstrated to be unresponsive to appropriate treatment. It is true that petitioner's has uncontrolled diabetes. However, her diabetes has not been demonstrated to be unresponsive to appropriate treatment. This is because she refuses to take insulin. At the November 12, 2014 Hearing it was suggested that her sleep apnea would qualify as a life-limiting comorbid medical condition capable of producing a significant

decrease in health status that is demonstrated to be unresponsive to appropriate treatment. However, the evidence in the record of this matter is that her sleep apnea is getting better (she uses a CPAP) and, therefore, is responsive to appropriate treatment.

CONCLUSIONS OF LAW

For the reasons discussed above, petitioner is not eligible for payment by the MA program for Laparoscopic Gastric Bypass/Roux-En-Y surgery.

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 24th day of November, 2014

\sSean P. Maloney
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 November 24, 2014.

Division of Health Care Access and Accountability