



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/160782

PRELIMINARY RECITALS

Pursuant to a petition filed September 22, 2014, under Wis. Stat., §49.45(5), to review a decision by the Division of Health Care Access and Accountability (DHCAA) to deny Medical Assistance (MA) authorization for foot orthotics, a hearing was held on November 5, 2014, by telephone.

The issue for determination is whether the Division of Hearings and Appeals has jurisdiction to approve petitioner's prior authorization request.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Written submission of Pamela J. Hoffman, PT Consultant

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Lafayette County.
2. On May 28, 2014, [REDACTED] requested prior authorization for orthopedic shoes and a foot insert brace, PA no. [REDACTED]. By a letter dated July 16, 2014, the DHCAA denied the request.
3. Petitioner's mother filed this appeal on petitioner's behalf on September 22, 2014.

DISCUSSION

The DHCAA may only reimburse providers for medically necessary and appropriate health care services and equipment listed in Wis. Stat., §§ 49.46(2) and 49.47(6)(a), as implemented by the Wisconsin Administrative Code, chapter DHS 107.

The administrative code provision governing durable medical equipment provides, in relevant part, as follows:

DHS 107.24. Durable Medical Equipment and Supplies . . .

(2) COVERED SERVICES . . . (c) Categories of durable medical equipment. The following are categories of durable medical equipment covered by MA:...

2. Orthopedic and corrective shoes. These are any shoes attached to a brace for prosthesis
3. Orthoses. These are devices which limit or assist motion of any segment of the human body. They are designed to stabilize a weakened part or correct a structural problem. Examples are arm braces and leg braces....

(4) OTHER LIMITATIONS . . .

(f) Orthopedic or corrective shoes or foot orthoses shall be provided only for postsurgery conditions, gross foot deformities, or when attached to a brace or a bar. These conditions shall be described in the prior authorization request....

(5) NON-COVERED SERVICES. The following services are not covered services:

- (a) Foot orthoses or orthopedic or corrective shoes for the following conditions:
 1. Flattened arches, regardless of the underlying pathology;
 2. Incomplete dislocation or subluxation metatarsalgia with no associated deformities;
 3. Arthritis with no associated deformities; and,
 4. Hypoallergenic conditions....

Under MA rules orthotics can be covered only for postsurgery conditions or gross foot deformities. The DHCAA denied the request because petitioner's diagnosis is listed as "pes planus," which essentially is flattened arches.

Petitioner's mother explained that she is more interested in the leg brace, and I suggest that perhaps the provider could file a new prior authorization request just for the brace. I cannot order the brace to be covered, however, because this appeal was filed too late for this office to have jurisdiction. An appeal of a negative action concerning MA must be filed within 45 days of the action. Wis. Stat. §49.45(5)(a). Language concerning the right to appeal and the time limit is included on all department notices; the notice sent to petitioner stated that the appeal had to be filed by August 30, 2014. If an appeal is untimely the Division of Hearings and Appeals lacks jurisdiction to consider the petitioner's position on the merits.

Petitioner's mother stated that she was in the hospital and did not see the notice until she was discharged, which was after August 30. There is not good cause exception to the time limit, however, and thus I cannot address the merits of the appeal. Nevertheless, the provider can always file a new request for one or both of the items previously requested if medical necessity can be shown.

CONCLUSIONS OF LAW

Petitioner's appeal of a prior authorization denial was untimely.

THEREFORE, it is ORDERED

That 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 7th day of November, 2014

\sBrian C. Schneider
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 7, 2014.

Division of Health Care Access and Accountability