



FH

Redact

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

In the Matter of

Redact

DECISION

MPA/161203

PRELIMINARY RECITALS

Pursuant to a petition filed October 10, 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 hearing was held on November 17, 2014, at Menomonie, Wisconsin.

The issue for determination is whether the petitioner is entitled medical assistance reimbursement for a bilateral breast reduction.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact

Respondent:

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

By: Lora Wiggins, M.D.

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # Redact) is a resident of Dunn County.

2. The petitioner with Redact requested a bilateral breast reduction on September 8, 2014, at a cost of \$14,578. The Division of Health Care Access and Accountability denied the request on September 16, 2014.
3. The petitioner had gastric bypass in 2011 and has lost almost 170 pounds from her maximum weight. She is now 5' 1 ½" and weighs 147 pounds. Her body mass index is 27.3. <http://www.nhlbi.nih.gov/guidelines/obesity/BMI/bmicalc.htm>. Her body surface area is at least 1.701 square meters, depending on how it is calculated. <http://www.medcalc.com/body.html>.
4. Under the Schnur criteria, a person with a body surface area of 1.7 must require the removal of at least 370 grams of tissue from each breast. http://www.bcbst.com/mpmanual/The_Schnur_Sliding_Scale_chart.htm.
5. The petitioner's request indicates that between 275 and 350 grams of tissue will be removed from her left breast and between 350 and 400 grams from her right.
6. The petitioner must wear a bra for comfort at all times of the day and night.
7. The petitioner is a 53-year-old woman who is going to nursing school.
8. The petitioner has pain in her upper back and neck that makes it difficult to sew and operate a computer. She has some degenerative discs and bulging in that area. She had a motor vehicle accident in March 2014.
9. The petitioner is diagnosed with severe grade 3 ptosis with excess skin on the breast and on the thoracic wall beside it.
10. The distance from the petitioner's sternal notch to her nipple is 28.5 cm on the left and 31 cm on the right, which is approximately one foot.
11. The petitioner's physician does not confirm that reducing the petitioner's breast size will alleviate her back pain.

DISCUSSION

The petitioner requests surgery to reduce the size of her breasts. Like any medical assistance service, she must show that it is medically necessary, meaning that it is "[r]equired to prevent, identify or treat a recipient's illness, injury or disability..." A service is not medically necessary if it is provided purely for cosmetic reasons. Wis. Admin. Code § DHS 101.03(96m). To qualify for breast-reduction surgery, she must document that conservative treatment has not alleviated her symptoms within three months, an appropriate amount of tissue must be removed from each breast, and she has at least four medical signs or symptoms of macromastia, such as:

postural backache (ICD-0 724.5, 781.9), upper back and neck pain (ICD-9 724.1, 723.1), chronic breast pain due to breasts (ICD-9: 611.71), "true hypertrophy" (ICD-9 611.1), intertrigo (severe and intractable inflammation and/or infection in the fold beneath the breasts) (ICD-9 695.89), shoulder grooving and kyphosis (ICD-9 737.10), gross asymmetry of the breasts or absence of a breast, resulting from resection of the opposite breast due to cancer or infection.)

Prior Authorization Guidelines Manual, § 117.006.02

The petitioner has lost nearly 170 pounds from her maximum weight after gastric bypass surgery three years ago, but continues to have large breasts. She is 5'1 ½" tall and weighs 147 pounds, giving her a surface area of 1.7 square meters. To meet the Schnurr criteria, she would need to have 370 grams of tissue removed from each breast. Her physician proposes removing between

275 and 350 grams from her left breast and between 350 and 400 grams from her right. Because this is a guideline, and the petitioner is close to meeting it, I will not deny the request on this ground.

Her main complaints are that her breasts cause upper back and neck pain and that she sometimes gets sores underneath her breasts. She has had two car accidents, and there is objective evidence of deterioration and bulging in these areas, so she her complaints about pain are believable. The question is whether she has established that the requested surgery will alleviate this pain. Her medical records indicate that she believes the reduction will reduce her pain, but none of her medical providers confirm that this is true. Although she had a positive attitude and was believable, her physicians' reluctance to indicate that a breast reduction will reduce her symptoms is understandable. The total amount of tissue she seeks to have removed from her breasts is between 22 and 26 ounces, or up to a pound and a half. Although this weight is concentrated in one portion of her body rather than spread throughout her body, it does not seem to be enough to make a significant difference in her pain. Perhaps with her great weight loss, she will also have a significant amount of skin removed. But this is not discussed in the medical records.

The petitioner also testified credibly that she has had some sores under her breasts. But this is not the severe or intractable infection she needs to establish her claim. And she testified that she must wear a bra at all times because of her discomfort. This is not listed as one of the signs of macromastia, but I will assume it is of the same magnitude of those listed because it confirms her testimony that her breast size affects her sleep and overall comfort. Nevertheless, even with this assumption, she does not meet four of the medical signs of macromastia. Therefore, I must uphold the agency's decision.

I note to the petitioner that she can file a new request for this surgery, but will need more medical evidence to establish any new request.

CONCLUSIONS OF LAW

The Division of Health Care Access and Accountability correctly denied the petitioner's request for a bilateral breast reduction because she and her provider have not established by the preponderance of the credible evidence that the request is medically necessary.

THEREFORE, it is

ORDERED

The petitioner's appeal 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 29th day of December, 2014

\sMichael D. O'Brien
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 December 29, 2014.

Division of Health Care Access and Accountability