



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
*Redact*

DECISION

HMO/161421

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 21, 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 (DHCAA or Division) in regard to Medical Assistance (MA), a hearing was held on December 11, 2014, by telephone. The hearing record was held open for one day for a clarifying submission from the Division, which was received.

The issue for determination is whether the Division correctly upheld an HMO's denial of a prior authorization request for prescription ketamine injections.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
*Redact*

Respondent:

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

By: *Redact*, RN  
Nurse Consultant  
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 is a resident of Fond du Lac County. She is certified for MA.

2. In October 2014, a prior authorization request was submitted on the petitioner's behalf for the prescription drug, ketamine. The petitioner's MA HMO denied that request in writing on October 17, 2014. The basis for denial was that the drug is experimental. The petitioner then filed this hearing request. In anticipation of hearing, a Division physician reviewed the request. She concluded that the HMO's denial was correct.
3. The Division's basis for upholding the denial is that Ketamine infusions are an experimental treatment for chronic pain relief, and that they have serious side effects. Authorization is only allowable as a last resort for a terminal cancer patient with uncontrolled pain.
4. The petitioner, age 50, has severe chronic pain in the lower back and legs. Her diagnoses are degenerative disk disease (L5-S1), mild spondylosis (L4-5), history of ankle fracture followed by a fusion procedure, history of high blood pressure, bipolar disorder, anxiety disorder, major depressive disorder, insomnia, overweight, diabetes, overactive bladder, COPD and chronic pain. She used a spinal cord stimulator for pain relief for several years. However, due to scarring in the epidural space, she can no longer receive this treatment. She has tried physical therapy in the past, but did not achieve pain relief. Thus, the petitioner seeks another treatment for her chronic pain.
5. The petitioner does not have cancer.
6. Ketamine Hydrochloride (generic name) is an injectable prescription drug. Per its manufacturer's label, the drug is used as an anesthetic during surgical procedures. The drug increased the blood pressure of test animals. Per the manufacturer's label, in 12 percent of patients using the drug, psychological side effects of hallucinations, delirium and irrational behavior have been observed. *See*, Exhibit 2, drug label.
7. The FDA has only approved ketamine as an anesthetic for diagnostic or surgical procedures.

### DISCUSSION

Medically necessary prescription drugs can be an MA-covered service, and many are subject to prior authorization. Wis. Admin. Code §DHS 107.10(1),(2)(d). Outpatient Ketamine HCl is subject to prior authorization, because the Division has determined that it is experimental if used for a purpose other than an anesthetic during diagnostic or surgical procedures.

State code only allows for MA coverage of a drug if it is medically necessary and appropriate for a given condition. Wis. Admin. Code §DHS 107.02(3)(e). A drug is not medically necessary or appropriate if its use for a given condition is "experimental in nature." *Id.*, §DHS 107.03(4). A treatment is "experimental in nature" if it is not "a proven and effective treatment for which it is intended or used. ... [The Department looks at] the current and historical judgment of the medical community as evidenced by medical research, studies, journal or treatises; ... . *Id.*, §107.035.

The Department has determined that the only patients for whom use of ketamine as a chronic pain reliever is not experimental are terminal cancer patients who are not responding adequately to conventional pain relief.

The Department's policy determination relied upon the manufacturer's product label (approved by the U.S. Food and Drug Administration (FDA)) which states that the indications for use of ketamine are as an anesthetic in diagnostic and surgical procedures. The FDA-approved label makes no mention of recommended use for treatment of chronic pain relief. *See* FDA website for approval of the ketamine label, at [http://www.accessdata.fda.gov/drugsatfda\\_docs/label/2012/016812s039lbl.pdf](http://www.accessdata.fda.gov/drugsatfda_docs/label/2012/016812s039lbl.pdf) (viewed in December 2014).

The petitioner testified to her significant problems with pain management. However, she offered no medical research *documentation* to support the appropriateness of ketamine injections for a person with her diagnoses. Therefore, I find the Division's position in this case to be reasonable and consistent with state code.

**CONCLUSIONS OF LAW**

1. MA coverage of ketamine for outpatient, chronic pain relief is not permissible, medically necessary or appropriate for treatment of a patient with the petitioner's diagnoses.

**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 30th day of December, 2014

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\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 January 2, 2015.

Division of Health Care Access and Accountability