



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

[Redacted]
Redact
[Redacted]

DECISION

MPA/161684

PRELIMINARY RECITALS

Pursuant to a petition filed October 30, 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 December 11, 2014.

The issue for determination is whether petitioner is eligible for payment by the MA program for surgery to remove excess skin.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
Redact
[Redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
BY: Lora Wiggins, M.D., Chief Medical Officer
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 (CARES # [Redacted]; 52 years old) is a resident of Columbia County, Wisconsin.

2. Petitioner's provider (John W. Siebert, MD of the University of Wisconsin Medical Foundation in Middleton, Wisconsin) requested Prior Authorization ["PA"] for MA coverage of surgery to remove excess skin from petitioner's thighs at a cost of \$10,104.00; he did so by a *Prior Authorization Request Form (PA/RF)* dated September 30, 2014 (PA # Redact).
3. DHCAA denied PA # Redact and sent a letter to petitioner dated October 14, 2014 entitled *BadgerCare Plus Notice of Appeal Rights* notifying petitioner of the denial.

DISCUSSION

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

This is a denial of eligibility for services; it is not discontinuation of services. As with any eligibility denial, the burden is on petitioner to show that she is eligible for the requested services. *Lavine v. Milne*, 424 U.S. 577, 583-584 (1976). Petitioner has failed to do so.

In determining whether to approve or disapprove a PA request DHCAA must consider the limitations imposed by pertinent federal or state statutes, rules, regulations, or interpretations, including Medicare or private insurance guidelines. Wis. Admin. Code § DHS 107.02(3)(e)9. (February 2014). Surgery to remove excess skin is considered medically necessary if at least one of the following criteria is met:

- The medical record documents that the excess skin folds cause a chronic intertrigo that is refractory to at least three months of appropriate medical therapy or consistently recurs over three months while receiving appropriate medical therapy.
 - There is presence of a significant functional deficit that prohibits or profoundly impairs the ability to perform activities of daily living due to a significant physical deformity or disfigurement resulting from the excess skin folds, and surgery is expected to restore or greatly improve the functional deficit.
- Examples of this would be deficits that prohibit a member from being able to properly shower or toilet.

ForwardHealth Update No. 2014-01 (January 2014).

Petitioner claims that surgery to remove excess skin from her thighs is medically necessary because she meets the 2nd of the above 2 criteria; namely, that she has a significant functional deficit that prohibits or profoundly impairs her ability to perform activities of daily living due to a significant physical deformity or disfigurement resulting from the excess skin folds. However, the evidence in the record of this matter is that petitioner has problems with rashes and skin breakdown under the skin folds due to chaffing of the thighs, that she has difficulty exercising due to the excess, and that she has had multiple knee surgeries and would like to take some pressure/weight off of her knees. Petitioner testified that her excess weight causes her difficulty standing and walking for any period of time, that the flaps of skin make it difficult to exercise, and that the excess skin causes hygiene problems. None of this rises to the level of "a significant functional deficit that prohibits or profoundly impairs her ability to perform activities of daily living."

CONCLUSIONS OF LAW

For the reasons discussed above, DHCAA correctly denied PA for surgery to remove excess skin.

NOW, 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 22nd day of December, 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 December 22, 2014.

Division of Health Care Access and Accountability