



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

MPA/161756

PRELIMINARY RECITALS

Pursuant to a petition filed November 4, 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 December 17, 2014, at Eau Claire, Wisconsin.

The issue for determination is whether the petitioner is entitled to 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: Dr. Redact, 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 Eau Claire County.

2. The petitioner with the Redact requested a bilateral breast reduction on October 10, 2014, at a cost of \$15,122. The Division of Health Care Access and Accountability denied the request on October 22, 2014.
3. The petitioner is 5'7" and weighs 253 pounds. Her body mass index is 39.6. <http://www.nhlbi.nih.gov/guidelines/obesity/BMI/bmicalc.htm>. She would need to lose 68 pounds to no longer be considered obese. Her body surface area is at least 2.25 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 2.25 must require the removal of at least 978 grams of tissue from each breast. http://www.bcbst.com/mpmanual/The_Schnur_Sliding_Scale_chart.htm.
5. The petitioner's request indicates that 1,000 grams of tissue will be removed from her left breast and 800 grams from her right. This is a total of approximately four pounds of tissue.
6. The petitioner has an occasional cyst on the side of her breast.
7. The petitioner's bra strap causes an indentation in her shoulder.
8. The petitioner has lower back pain and occasional upper back pain. She also has diabetes and asthma.
9. The petitioner was in a car accident when she was 19 years old. (She is now 45.) She smoked cigarettes until a year or two ago. She continues to be exposed to second-hand smoke at home.
10. 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 5'7" tall and weighs 253 pounds, giving her a surface area of 2.25 square meters. To meet the Schnurr criteria, she would need to have 978 grams of tissue removed from each breast. Her physician proposes removing at least 1,000 grams from her left breast and 800 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 complaint is back pain (primarily lower but some upper), COPD, occasional cysts on her breasts, and indentations from her bra straps, all of which she attributes at least partially to her breast size. Nothing in the request's medical records ties her breast size to her back or breathing problems. There are

more reasonable explanations for both. She injured her back in a car accident at age 19 and she is heavy. Her weight current weight would need fall by 68 pounds for her to no longer be considered obese and another 30 to not be considered overweight. Given that she is almost 100 pounds overweight, I do not understand how her back problems can be tied to the four pounds of excess breast tissue she seeks to have removed, or how that removal would help her condition. As for her COPD, she smoked cigarettes until a year or two ago, and she continues to live with those who smoke indoors. This provides a more plausible cause of her COPD than her breast size. She has not established either her back or breathing problems are signs of macromastia.

There is no medical verification of her cysts, but even if I assume this and the indentations on her shoulders are medical signs of macromastia, she has not established four such signs. Therefore, I must uphold the agency's decision.

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 9th day of January, 2015

\sMichael D. O'Brien
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 9, 2015.

Division of Health Care Access and Accountability