FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

MPA/161788

PRELIMINARY RECITALS

Pursuant to a petition filed November 07, 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 telephonic hearing was held on December 17, 2014, at Manitowoc, Wisconsin. At the very start of the hearing, petitioner's wife and representative indicated that she had just received OIG's December 15, 2014 summary with attachments. This ALJ offered to reschedule the hearing, if she wanted more time to review that OIG summary and prepare for the hearing. However, Mrs. [redacted] stated specifically that she wanted to proceed with the hearing that day and did not want to reschedule. At the request of petitioner, the record was held open for two weeks for the submission of additional information from petitioner's physician, Dr. Tracy Sherman. However, petitioner did not submit any new physician letter to DHA by January 1, 2015 or even by the date of this decision.

The issue for determination is whether the Department correctly denied petitioner's prior authorization (PA) request for a PET (positron emission tomography) scan of his head.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[redacted]

Representative:

[redacted], wife and health care POA
[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Robert Derendinger, RN consultant
Office of the Inspector General
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:
Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 58 year old man who is a resident of Manitowoc County and is certified for MA.
2. The petitioner had a grand mal seizure which occurred about two years ago. He also has medical complaints of memory loss, and based upon his family he is not acting himself and is irritable and impulsive with his behaviors.
3. During the September 2, 2014 appointment with petitioner's physician, Dr. Tracy Sherman, petitioner was noted to have cognitive impairment, memory loss, and impulsive behaviors.
4. The petitioner has a family history of Alzheimer's and Parkinson's disease.
5. The PET scan was requested by his physician to evaluate the petitioner's brain and differentiate between Alzheimer's disease versus frontal-temporal lobe dementia in order to decide upon the most appropriate medication for treatment purposes.
6. During early September, 2014, the petitioner's physician, Dr. Tracy Sherman, from Aurora Medical Center submitted a prior authorization (PA) on behalf of petitioner for approval of a PET scan of the petitioner's head.
7. On September 24, 2014, the Division of Health Care Access and Accountability (Division) sent a notice to petitioner which denied petitioner's request for a PET scan due to the provider's failure to establish the medical necessity of the requested procedure because the requested PET scan was experimental in the investigation and differentiation between the diagnosis of whether petitioner has Alzheimer's disease, dementia, and other neurodegenerative or neurologic disorders.
8. In its December 15, 2014 detailed summary, DHCAA provided the following summary statement with attachments to establish why it denied the petitioner's PA request for a September, 2014 PET scan of petitioner's head: "that petitioner's provider did not submit clinical information that petitioner's PET scan was not experimental under MedSolutions Head Imaging Guideline of HD-10.2, Dementia – PET: which states: FDG and Amyloid Brain PET (CPT 78608) imaging are considered experimental and investigational in the diagnosis of Alzheimer's disease and in differentiation between Alzheimer's disease and other neurodegenerative or neurologic disorders."
9. The petitioner did not submit any new medical evidence from any physician to refute that the requested PET scan was experimental as explained in Finding of Fact #8 above and the Preliminary Recitals above.
10. A PET scan was not completed of the petitioner by the date of the December 17, 2014 hearing.

DISCUSSION

Medical assistance covers physician-prescribed diagnostic services if they are consistent with good medical practices. Wis. Adm. Code, §§ DHS 107.06(1) and 107.25. In an effort to ensure that CT, MRI, and **PET scans** are consistent with good medical practice, the Division of Health Care Access and Accountability requires prior authorization before paying for them. It announced this requirement to providers in October 2010 through *MA Update*, #2010-92.

The petitioner's PET scan was requested by petitioner's physician to evaluate the petitioner's brain and differentiate between Alzheimer's disease versus frontal-temporal lobe dementia in order to decide upon the most appropriate medication for treatment purposes. The petitioner had a prior MRI of his head performed during October, 2013 which indicated moderate central and cortical atrophy. Petitioner also underwent multiple CT scans of his head in the past. The Division denied the petitioner's PA request for a PET scan on September 24, 2014 for the reasons set forth in Findings of Fact #7 - #9 above. Basically, the PA was denied based upon Head Imaging Guidelines that PET scans are considered experimental and investigational for neurodegenerative conditions including dementia, Parkinson's disease and related disorders.

Both the Wisconsin Administrative Code and written policy are very clear, in several places, that, if a prior authorization (PA) is not requested **and obtained before a service requiring PA is provided**, reimbursement shall not be made. Wis. Admin. Code § DHS 107.02(3)(c); See also, Wis. Admin. Code §§ DHS 106.03(4)(intro.), 107.02(2)(h) & 107.03(9) *WMAP Provider Handbook* (WMAP Handbook) Part A Section VIII-C (page A8-001) & Part A Appendix 15 (page A11-041 #2); additionally see, Wis. Admin. Code §§ DHS 107.02(1)(a), 107.02(2)(intro.), 107.02(2)(a), 107.02(3)(e)9. & 107.02(3)(i)2.c.

The Bureau 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 Wis. Admin. Code § DHS 107. Some services and equipment are covered if a prior authorization request is submitted and approved by the Bureau in advance of receiving the service. Finally, some services and equipment are never covered by the MA program. The Bureau determined in this case that the requested PET scan of petitioner's head is not covered by the MA program in this case because the procedure is "experimental" and therefore not "medically necessary" as that term is used in the MA Program. See Wis. Admin. Code § DHS 107.02(3)(e); see also, Wis. Admin. Code § DHS 101.03(96m).

In determining whether to grant prior authorization for services or equipment, the Bureau must always follow the general guidelines in Wis. Admin. Code DHS § 107.02(3)(e). That subsection provides that the Bureau, in reviewing prior authorization requests, must consider the following factors:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including Medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. **The professional acceptability of unproven or <u>experimental</u> care, as determined by consultants to the department.**

(Emphasis added).

The Bureau employs professional consultants to apply these criteria to each and every PA Request

"Medical necessity" is defined in the Code as follows:

"Medically necessary" means a medical assistance service under ch. HFS 107 that is:

(a) Required to prevent, identify or treat a recipient's illness, injury or disability; and

(b) Meets the following standards:

1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;

2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;

3. Is appropriate with regard to generally accepted standards of medical practice;

4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;

5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not **experimental** in nature;

6. Is not duplicative with respect to other services being provided to the recipient;

7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;

8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and

9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

(Emphasis added).

Wis. Admin. Code § DHS 101.03(96m).

The Wisconsin Administrative Code, at DHS 107.035(1) speaks to the definition and identification of experimental services:

(1) DEFINITION. "Experimental in nature," as used in s. DHS 107.03(4) and this section, means a service, procedure or treatment provided by a particular provider which the department has determined under sub. (2) not to be a proven and effective treatment for the condition for which it is intended or used.

During the December 17, 2014, petitioner's wife argued that her husband needed a clear diagnosis so that the most appropriate medication could be selected (and to avoid drug complications). However, during the hearing and while the record was held open, Mrs. [redacted] was unable to provide any physician statement to refute that the requested brain scan was determined to be "experimental" per MedSolutions Head Imaging Guideline of HD-10.2, Dementia – PET: which states: FDG and Amyloid Brain PET (CPT 78608) imaging are considered experimental and investigational in the diagnosis of Alzheimer's disease and in differentiation between Alzheimer's disease and other neurodegenerative or neurologic disorders. Moreover, petitioner did not submit any additional information from petitioner's physician, Dr.

Tracy Sherman while the record was held open. See above Preliminary Recitals. Accordingly, based upon the above, I must conclude that the Division of Health Care Access and Accountability correctly denied petitioner's prior authorization (PA) request for a PET scan of his head due to petitioner not establishing the medical necessity of the scan because Head Imaging Guidelines determined such scan was "experimental."

CONCLUSIONS OF LAW

The Division of Health Care Access and Accountability correctly denied petitioner's prior authorization (PA) request for a September, 2014 PET scan of his head as not medically necessary and "experimental."

THEREFORE, it is **ORDERED**

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 5th day of February, 2015

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\sGary M. Wolkstein
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 February 5, 2015.

Division of Health Care Access and Accountability