



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MPA/161952

PRELIMINARY RECITALS

Pursuant to a petition filed November 14, 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 February 19, 2015, at Siren, Wisconsin. The Division of Hearings and Appeals initially dismissed the appeal on December 18, 2014, after the petitioner missed her scheduled for December 15, 2014. She requested a rehearing on January 14, 2015, which was granted on February 2, 2015.

The issue for determination is whether the department correctly denied the petitioner's request for a CT scan of her thoracic and lumbar spine without contrast.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Robert Derendinger, R.N.
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 # [redacted]) is a resident of Burnett County.

2. The petitioner received a CT scan without contrast of her thoracic and lumbar spine on September 26, 2014.
3. The petitioner requested the scan on September 26, 2014. The Division of Health Care Access and Accountability denied the request on September 29, 2014.
4. The petitioner did not face a medical emergency when her provider requested the scan.

DISCUSSION

Medical assistance covers physician-prescribed diagnostic services if they are consistent with good medical practices. Wis. Admin. Code, §§ DHS 107.06(1) and 107.25. The petitioner received a CT scan of her thoracic and lumbar spine without contrast on September 26, 2014. Her provider requested reimbursement for the scan that same day. It is unclear whether the request was sent just before or just after the scan was performed, but it is clear that the provider did not wait for a response from the Office of Inspector General, which denied the request on September 29, 2014.

In an effort to ensure that CT, MRI, MRA, and PET scans are consistent with good medical practice, in 2010 the Division of Health Care Access and Accountability, under authority granted by Wis. Admin. Code, § DHS 107.02(3)(a), began requiring prior authorization before paying for them. *MA Update*, #2010-92.

Rules governing prior authorizations state: “If prior authorization is not requested and obtained before a service requiring prior authorization is provided, reimbursement shall not be made except in extraordinary circumstances such as emergency cases where the department has given verbal authorization for a service.” Wis. Admin. Code, § DHS 107.02(3)(c). This rule is not absolute. Section DHS 106.03(4)(a), which is found in the chapter in the administrative code pertaining to the provider’s rights and responsibilities, allows an exception to this general rule “[w]here the provider's initial request for prior authorization was denied and the denial was either rescinded in writing by the department or overruled by an administrative or judicial order.” This is not an open-ended invitation to submit a request at any time; such a reading would eviscerate Wis. Admin. Code, § DHS 107.02(3)(c). Rather, the two provisions must be harmonized.

I find no reason to grant an exception to § DHS 107.02(3)(c) in this matter because the petitioner did not face an emergency or extraordinary situation. She did have sharp back pain, but she was able to bend over and pick up her oxygen tank. Nothing in the evidence or request indicates that waiting a few days for the Office of Inspector General’s response would have caused her condition to deteriorate or seriously threatened her health.

I note that the provider cannot hold the petitioner responsible for the cost of this service unless it informed her before providing the scan that she would be liable for it. Wis. Admin. Code, § DHS 104.01(12)(c). (The Office of Inspector General’s citation to this section is incorrectly listed as § DHS 104.01(12)(2)(c).)

CONCLUSIONS OF LAW

The petitioner’s provider is not entitled to medical assistance reimbursement for a CT scan without contrast of her lumbar and thoracic spine because it did not submit the request before providing the scan and because the petitioner’s medical situation was not an emergency.

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 2nd day of March, 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 March 2, 2015.

Division of Health Care Access and Accountability