



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

HMO/162087

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 20, 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 in regard to Medical Assistance, a hearing was held on December 23, 2014, at Elkhorn, Wisconsin.

The issue for determination is whether Petitioner's appeal is timely and, if timely, whether a prior authorization request for breast reduction surgery was correctly denied.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Dr. Donna Davidoff of United Healthcare and written submission from the  
Division of Health Care Access and Accountability  
Madison, WI

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Walworth County.
2. A prior authorization request for breast reduction surgery was submitted on Petitioner's behalf to her MA/BadgerCare+ HMO in September 2014. On September 25, 2014, the HMO issued written notice of the denial of the request. That denial prompted the instant hearing request. That notice does contain appeal instructions noting that an appeal to the Division of Hearings and Appeals had to be filed within 45 days of the denial.

3. Petitioner is 53 years of age and reports back, breast and shoulder pain. The requesting letter from her physician simply states that she has symptomatic macromastia and has failed conservative measures.
4. The HMO must follow the same standards for gastric bypass surgery approval as are used in “regular” fee-for-service MA. The HMO’s basis for denial was that documentation that the requested surgery would alleviate Petitioner’s physical problems was lacking in the request. The denial noted that there needs to be proof of limitations in a person’s basic life functions as well as documentation of other medical testing and treatment.
5. The denial was reviewed by a physician with the Department of Health Services’ Division of Health Care Access and Accountability in preparation for this hearing and that physician agreed that the denial was correct and noted that if the request had come to the Department as a fee for service Medicaid request that the request would have been sent back to the provider for more of the same type of documentation noted as lacking in the HMO denial of September 25, 2014.

### DISCUSSION

Under the discretion allowed by *Wis. Stat.*, §49.45(9), the Department of Health Services (DHS) requires MA recipients to participate in HMOs. *Wis. Admin. Code*, §DHS 104.05(2)(a). Medicaid law and policy applies to recipients enrolled in HMOs.

In order for the Division of Hearings and Appeals to make a decision on the merits of an appeal, it must have legal authority to do so. It loses that authority where an appeal is untimely. A timely hearing request concerning Medicaid matters must be filed within 45 days of the notice of the agency decision. §49.45(5)(a), *Wis. Stats.* In reviewing this case it became apparent that this appeal is not timely. The denial notice is dated September 25, 2014 but the appeal not filed until November 20, 2014. This is 56 days after the denial. Thus the appeal is untimely and the Division of Hearings and Appeals without authority to make a decision on the merits of this matter.

Even if, however, the Division of Hearings and Appeals had legal authority I would uphold the denial.

Under the discretion allowed by *Wis. Stat.*, §49.45(9), the Department of Health Services (DHS) now requires MA recipients to participate in HMOs. *Wis. Adm. Code*, §DHS 104.05(2)(a). MA recipients enrolled in HMOs must receive medical services from the HMOs’ providers, except for referrals or emergencies. *Wis. Adm. Code*, §DHS 104.05(3).

The criteria for approval by a managed care program contracted with the DHS are the same as the general MA criteria. *See Wis. Adm. Code*, §DHS 104.05(3), which states that HMO enrollees shall obtain services “paid for by MA” from the HMO’s providers. The DHS must contract with the HMO concerning the specifics of the plan and coverage. *Wis. Adm. Code*, §DHS 104.05(1). If the enrollee disagrees with any aspect of service delivery provided or arranged by the HMO, the recipient may file a grievance with the DHS or appeal to the Division of Hearings and Appeals. Here Petitioner did not file a grievance but filed this appeal with the Division of Hearings and Appeals.

A service, like breast reduction surgery, is medically necessary if it is, among other things, “[r]equired to prevent, identify or treat a recipient’s illness, injury or disability...” *Wis. Adm. Code*, §DHS 101.03(96m)(a). To help determine whether a service is medically necessary, the HMO can use policies under its health plan to set criteria for some requested services. The original denial from the HMO states that the PA request was denied because the request did not meet its policy for breast reduction surgery.

BadgerCare+ HMOs and Medicaid SSI HMOs may develop PA guidelines that differ from fee-for-service guidelines. However, the application of such guidelines may not result in less coverage than fee-for-service. Thus, when the DHS reviewed the matter after Petitioner requested this hearing, the DHS’s

Medical Consultant used the guidelines found in the MA Provider Handbook relative to this type of surgery. Those requirements are:

Topic #12377

**Gynecomastia Surgery**

All [gynecomastia](#) procedures require PA. A gynecomastia procedure that does not meet the PA approval criteria is considered noncovered. Any charges related to the noncovered gynecomastia procedure will not be reimbursed.

**Prior Authorization Policy**

PA requests for gynecomastia surgery may be approved under [DHS 107.06\(2\)\(c\)](#), Wis. Admin. Code, which states PA is required for "surgical or medical procedures of questionable medical necessity but deemed advisable in order to correct conditions that may reasonably be assumed to significantly interfere with a recipient's personal or social adjustment or employability, an example of which is cosmetic surgery."

*Note:* Surgical removal of excess male breast tissue is rarely indicated and is usually for cosmetic reasons as there is no functional impairment associated with this disorder.

**Prior Authorization Approval Criteria**

Prior authorization requests for gynecomastia surgery must meet one of the following criteria:

- Klinefelter's syndrome is diagnosed.
- Post pubertal-onset gynecomastia has persisted for one year with all of the following criteria:
  - Glandular breast tissue confirming true gynecomastia is documented on physical exam and/or mammography.
  - Gynecomastia is classified as a Grade II, III, or IV per the American Society of Plastic Surgeons classification.\*
  - The condition is associated with persistent breast pain, despite the use of analgesics.
  - The use of potential gynecomastia-inducing drugs and substances has been identified and discontinued for at least one year when medically appropriate.
  - The gynecomastia persists despite correction of any underlying causes.
  - Hormonal causes including hyperthyroidism, estrogen excess, prolactinomas and hypogonadism have been excluded by appropriate laboratory testing (TSH, estradiol, prolactin, testosterone, and/or luteinizing hormone).

\* American Society of Plastic Surgeons scale adapted from the McKinney and Simon, Hoffman and Khan scales:

- Grade II: Moderate breast enlargement exceeding areola boundaries with edges that are indistinct from the chest.
- Grade III: Moderate breast enlargement exceeding areola boundaries with edges that are indistinct from the chest with skin redundancy present.
- Grade IV: Marked breast enlargement with skin redundancy and feminization of the breast.

*Online Provider Handbook found at <https://www.forwardhealth.wi.gov>*

On a practical level missing here is the clinical documentation showing interference with Petitioner's activities of daily living and a description of other measures taken to identify the source and/or the treatment of Petitioner's physical problems.

Petitioner is certainly free to ask her provider to refile the request for the breast reduction surgery but should be mindful of the documentation required.

**CONCLUSIONS OF LAW**

That Petitioner's appeal is not timely thus the Division of Hearings and Appeals has no legal authority to make a decision on the merits of Petitioner's appeal.

**THEREFORE, it is**

**ORDERED**

That this 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  
Milwaukee, Wisconsin, this 6th day of  
February, 2015

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\sDavid D. Fleming  
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 6, 2015.

Division of Health Care Access and Accountability