FH
Redact

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

MPA/162098

PRELIMINARY RECITALS

Pursuant to a petition filed November 19, 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 26, 2015, at Madison, Wisconsin. At the request of petitioner, hearings set for January 8, 2015 and February 5, 2015 were rescheduled. The record was held open for the parties to submit briefs to DHA based upon the following schedule: a) petitioner's initial brief by March 5, 2015; b) Department's responsive brief by March 12, 2015; and c) petitioner's reply brief by March 16, 2015. Attorney Redact timely submitted his brief to DHA and to the Department (OIG). The Department failed to submit any responsive brief to DHA. The petitioner's attorney sent a note stating that he intended not to file any reply brief due to the lack of any OIG response.

The issue for determination is whether the Department correctly approved the prior authorization (PA) request for removal of petitioner's ruptured breast implants, but denied the implantation of replacement implants despite the exception stated in DHS 107.06(2)(c), Wis. Admin. Code.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact

Petitioner's Representative:

Attorney Re... Redact
Legal Action of Wisconsin
Redact
Redact

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: F Redact, M.D., chief medical officer, no appearance and only written submissions

Office of the Inspector General (OIG)
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 (CARES # Redact) is a 57 year old resident of Dane County who receives Medical Assistance.

2. During January, 2013, the petitioner was diagnosed by psychiatrist Redact Redact, MD in his hospital discharge summary as Bipolar I disorder, mostly manic, severe with psychosis (separation from reality) with a Personality Disorder, not otherwise specified, on axis II. See Exhibit 3.

3. During her September 17, 2014 mammogram, it showed that petitioner had ruptured both of her silicone gel breast implants.

4. On or about October 6, 2014, University of Wisconsin Medical Foundation sent a prior authorization (PA) request to DHCAA on behalf of the petitioner for removal of breast capsule and enlargement of breast with replacement implant at a total requested cost of $18,414. See Exhibit 2.

5. The Department sent an October 15, 2014 notice to the petitioner stating that her PA request for removal of ruptured breast implant was approved, but the request for the enlargement of her breasts with replacement implants was denied as cosmetic and not medically necessary. See Exhibit 6.

6. During her December 31, 2014 appointment with Dr. Redact, her surgeon told petitioner that she will have "empty bags of skin" remaining on her chest in place of her breasts" without replacement implants after the removal of her leaking breast implants. See Exhibit 3.

7. During the February 26, 2015 hearing, petitioner testified credibly her "empty bags" of skin would be hideous, and that she would not have her ruptured implants removed if those implants could not also be replaced.

8. The petitioner attends weekly therapy with psychotherapist Re Redact, LCSW, who wrote a February 11, 2015 letter regarding petitioner's severe mental illness that makes her moods and conduct "highly unstable when she is under excessive emotional stress" See Exhibit 3. In that letter, Ms. Redact stated in pertinent part: " . . Her surgery, without the cosmetic surgery to follow, would cause stress that would cause manic, psychotic and possibly violent reactions (based on her recent history). In fact, it would not surprise me if she needed to be readmitted to the hospital for psychiatric reasons if denied." See Exhibit 3.

9. The petitioner is also under the care of psychiatrist, Dr. Redact who prescribes psychiatric medications for the petitioner's bipolar disease and personality disorder.

DISCUSSION

In the Department's December 16, 2014 denial summary, DHS chief medical officer, Dr. F Redact, MD asserted that the Department correctly denied the petitioner's request for "Breast Enlargement with Implants." However, such characterization of the requested surgery is unintentionally misleading. If petitioner were having inserted breast implants for the first time, then it would be accurate to describe the procedure as breast enlargement. However in this case, where the petitioner's breast implants have ruptured, the Department has approved the medical necessity of the removal of her ruptured silicone breast implants. It is only the second portion of the prior authorization request: the replacement of the breast implants that was determined cosmetic and not medically necessary by OIG. However, once the leaking implants are removed, is it accurate to conclude that the restorative implantation of replacement implants are only "clearly cosmetic," as alleged by Dr. Redact' in her December 16, 2014 denial letter. Instead, Attorney Redact more accurately described the implant replacement surgery as cosmetic

surgery to replace the space left by the removal with new implants. In her February 24, 2015 letter, Dr. Redact confirmed that the Department's denial for replacement of new breast implants was not altered, even after reviewing the relevant medical evidence in Exhibit 3 (Ms. Redact's letter and Dr. Redact' discharge summary).

The Wisconsin Administrative Code § DHS 107.06(2)(c) provides that a surgical or other medical procedure of questionable medical necessity is to be treated as a covered service and approved if it is 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." (Emphasis added).

In his brief, Attorney Redact asserted correctly that under this code section, a procedure may be regarded as therapeutic and medically necessary where the recipient's mental health status is at risk. He argued convincingly that the uncontested medical evidence indicates that the petitioner suffers from serious mental illness which places her at risk for experiencing "significant interference with personal or social adjustment if the replacement implants are not authorized." See above Findings of Fact.

During the February 26, 2015 hearing the petitioner testified credibly regarding her mental illness, and her past losses of employment and social adjustment problems. During that hearing and in his brief, Attorney Redact argued persuasively (with the evidence of Exhibit 3 and petitioner's testimony) that the particular facts of this case met the exception for cosmetic surgery indicated in DHS § 107.06(2)(c), Wis. Admin. Code. On each occasion that petitioner lost her employment, the hearing record indicates that Mr. Redact accurately assessed that petitioner "failed to apprehend that her behavior deviated from expected normal behavior and she conveyed a perception of her work performance that was at odds with the behavior she described." No DHS representative appeared at the February 26, 2015 hearing to testify, answer questions, or respond to the petitioner's medical evidence. DHS did not offer any evidence to question the petitioners' mental health diagnoses or her provider's assessments and prognosis. Moreover, the Department did not submit any responsive brief to refute the petitioner's testimony, Exhibits, or petitioner's attorney's written brief. Accordingly, based upon a review of the entire hearing record, I conclude that the Department incorrectly denied the petitioner's PA request for implantation of replacement implants because petitioner met the criteria for approval of that cosmetic surgery as a covered service pursuant to DHS 107.06(2)(c), Wis. Admin. Code.

CONCLUSIONS OF LAW

The Department incorrectly denied the petitioner's PA request for implantation of replacement breast implants because petitioner met the criteria for approval of that cosmetic surgery as a covered service pursuant to DHS 107.06(2)(c), Wis. Admin. Code.

THEREFORE, it is **ORDERED**

The matter is remanded to the Department with instructions to take the necessary actions to approve the petitioner's PA request for implantation of replacement breast implants after her implant removal surgery, within 10 days of the date of this decision. The petitioner's provider must then submit its claim along with a copy of this decision to Forward Health for payment.

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 30th day of March, 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 March 30, 2015.

Division of Health Care Access and Accountability
Attorney Red... Redact