



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

HMO/162227

PRELIMINARY RECITALS

Pursuant to a petition filed November 21, 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 17, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether Anthem correctly denied the petitioner's back surgery because the surgery was not medically necessary.

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: Lucy Miller, RN

HMO – Anthem Blue Cross and Blue Shield
Anthony Otters, MD
Sheryl Fix, RN
Decision e-mailed to Kathleen.Kaelin@anthem.com

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Milwaukee County.
2. The petitioner receives Medical Assistance. Anthem Blue Cross and Blue Shield is the HMO administering the petitioner's Medical Assistance.
3. The petitioner's provider asked the HMO, Anthem Blue Cross and Blue Shield, hereinafter referred to as Anthem, to approve a spinal surgery.
4. On November 3, 2014 Anthem sent the petitioner a letter stating that they could "not approve [her] request for surgery to fuse [her] back bones [because they did] not see that [her] back bones ha[d] slipped out of position."
5. On November 21, 2014 the Division of Hearings and Appeals received the petitioner's request for fair hearing.
6. On December 12, 2014 the Department of Health Services (DHS) by ██████████ provided a letter in preparation for the hearing. The letter stated that ██████████ agreed with Anthem's decision not to approve this back surgery because "imaging studies do not reveal spondylolisthesis or stenosis" and "MRI dated May 15, 2014 [does not show] significant spinal canal compromise or nerve root encroachment."

DISCUSSION

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

The criteria for approval by a managed care program contracted with the DHCF are the same as the general MA criteria. See Adm. Code, §HFS 104.05(3), which states that HMO enrollees shall obtain services "paid for by MA" from the HMO's providers. The department must contract with the HMO concerning the specifics of the plan and coverage. Adm. Code, §HFS 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 department or appeal to the Division of Hearings and Appeals.

Just as with regular MA, when the department denies a grievance from an HMO recipient, the recipient can appeal the department's denial within 45 days. Wis. Stat., §49.45(5), Wis. Adm. Code, §HFS 104.01(5)(a)3.

MA services are covered if they are medically necessary. A service is medically necessary if it is "[r]equired to prevent, identify or treat a recipient's illness, injury or disability..." Wis. Adm. Code, §HFS 101.03(96m)(a).

In this case the petitioner fails to demonstrate that her requested back surgery is medically necessary. ██████████ very credibly testified that this back surgery was not medically necessary. ██████████ testified that he reviewed the petitioner's medical records and that there was no evidence of spinal canal slippage. The petitioner has arthritis in her back and has one disk that is tore up. However, this surgery is specifically not recommended in that type of a situation. Similarly ██████████ notes that there is no significant spinal canal compromise or nerve root encroachment, and therefore Anthem properly denied this service.

I have no doubt that the petitioner has significant back pain. The medical experts agree that the petitioner's conditions would cause significant back pain. The issue though is not whether or not the

petitioner has back pain, rather the issue is whether this surgery is medical necessary. [REDACTED] and [REDACTED] testified that the surgery is not medically necessary. [REDACTED] further highlighted that the petitioner's doctor's clinical note states that he informed the petitioner that the surgery may not help her, and that the surgery could worsen her symptoms.

I do not find the petitioner's testimony that her doctors believe this surgery will help is credible. The petitioner is not a doctor. She is in obvious pain. She would like to have this surgery, and likely does not understand all of the information presented to her regarding the surgery.

CONCLUSIONS OF LAW

Anthem correctly denied the petitioner's back surgery because it was not medically necessary.

THEREFORE, it is ORDERED

That the petition 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 14th day of January, 2015

\sCorinne Balter
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 14, 2015.

Division of Health Care Access and Accountability