



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MPA/162967

PRELIMINARY RECITALS

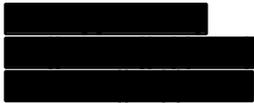
Pursuant to a petition filed December 29, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability (DHCAA) in regard to Medical Assistance (MA), a telephonic hearing was held on February 10, 2015.

The issue for determination is whether petitioner is eligible for payment by the MA program for Adderall.

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: written submittal of Lynn Radmer, R.Ph
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Winnebago County. He is diagnosed with hypersomnia with sleep apnea.
2. On October 21, 2014 the petitioner's pharmacy submitted a prior authorization (PA) request for petitioner to receive Adderall. See Exhibit 1.

3. On November 3, 2014 the DHCAA returned the PA to the pharmacy with the following message, “Returned. Adderall is diagnosis restricted by ForwardHealth. The documented diagnosis, hypersomnia, does not meet the diagnosis restriction.” *Id.*
4. On November 12, 2014 the pharmacy resubmitted the PA with a journal article entitled, “Practice Parameters for the Treatment of Narcolepsy and other Hypersomnias of Central Origin.” *Id.*
5. On November 25, 2014 the DHCAA issued a notice to petitioner denying the PA because petitioner’s diagnosis does not meet the diagnosis restriction. *Id.*

DISCUSSION

The DHCAA 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 ch. DHS 107. Some services and equipment are covered if a prior authorization request is submitted and approved in advance of receiving the service. Some services and equipment are never covered by the MA program. In this case petitioner is seeking PA approval for the drug Adderall, a stimulant.

Effective October 1, 2004 the agency implemented a Preferred Drug List (PDL) program for Wisconsin Medicaid. Most drugs and drug classes included on the PDL are covered by MA, but certain drugs may have restrictions (e.g., diagnosis, quantity limitations, age limitations). Most preferred drugs do not require PA except in those designated classes identified on the PDL. See Wis. Adm. Code §. Adderall is on the PDL, but it is restricted for certain diagnoses as a stimulant. According to the PA Provider Handbook, available online at <https://www.forwardhealth.wi.gov/WIPortal/Online%20Handbooks/Display/tabid/152/Default.aspx?ia=1&p=1&sa=48&s=3&c=345&nt=Stimulants+and+Related+Agents>, Topic #16357, drugs in the stimulant class are diagnosis restricted. A ForwardHealth-allowed diagnosis code is required for claims and PA requests for all stimulant and related agent drugs, except for Intuniv[®], Kapvay[®], modafinil, and Nuvigil[®]. The allowable diagnosis codes include hyperkinetic syndrome/Attention deficit disorder of childhood, Narcolepsy without cataplexy, Narcolepsy with cataplexy, Narcolepsy in conditions classified elsewhere without cataplexy, and Narcolepsy in conditions classified elsewhere with cataplexy. See <https://www.forwardhealth.wi.gov/WIPortal/Tab/42/icscontent/provider/medicaid/pharmacy/resources.htm#page#> (Diagnosis Restricted Drugs). Petitioner has not been diagnosed with any of these allowable diagnosis codes.

Where a prescriber writes a prescription with a diagnosis code outside of these allowable codes, such as is the case here, they must submit peer-reviewed medical literature to support the proven efficacy and safety of the drug for the specified diagnosis. See *ForwardHealth Update*, No. 2013-46, available online at <https://www.forwardhealth.wi.gov/kw/pdf/2013-46.pdf>. The pharmacy here resubmitted the PA with a journal article entitled, “Practice Parameters for the Treatment of Narcolepsy and other Hypersomnias of Central Origin.” However, the article states that the use of Adderall for hypersomnia was found to be inconclusive or showing conflicting evidence or conflicting expert opinion. Thus, there was no proven efficacy or safety of the drug for the specified diagnosis.

Section HFS 107.02(2)(b) of the Wisconsin Administrative Code states that the Division may reject payment for a service if the services are determined to be medically unnecessary, inappropriate, in excess of accepted standards of reasonableness or less costly alternative services, or of excessive frequency or duration. “Medically necessary” is a defined term at Section HFS 101.03(96m), Wis. Adm. Code. “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. HFS 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.

Similarly, Wis. Adm. Code HFS §§107.03(4) and (5) provide that the following services are not covered services under MA: services provided by a particular provider that are considered experimental in nature and procedures considered by the department to be obsolete, inaccurate, unreliable, ineffectual, unnecessary, imprudent or superfluous.

The end result is that the research provided does not show that the requested drug has a proven medical value for an individual with petitioner's diagnosis. I add, assuming petitioner finds this unfair, that I lack the equitable powers to grant the relief sought. See [Oneida County v. Converse](#), 180 Wis.2d 120, 125, 508 N.W.2d 416 (1993). In other words, administrative law judges do not have the power to address issues of fairness. We are required to apply the law as written. As such, I must uphold the denial. This does not mean that petitioner's pharmacy cannot submit another prior authorization request for the drug if he can substantiate its medical necessity.

CONCLUSIONS OF LAW

The petitioner is not eligible for payment by the MA program for Adderall.

THEREFORE, it is

ORDERED

The petition for review herein 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 26th day of February, 2015

\sKelly Cochrane
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 26, 2015.

Division of Health Care Access and Accountability