



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MPA/162969

PRELIMINARY RECITALS

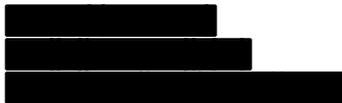
Pursuant to a petition filed December 31, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability (DHCAA or Division) in regard to Medical Assistance (MA)/BadgerCare Plus, a hearing was held on March 18, 2015, by telephone. A hearing set for February 17, 2015, was rescheduled at the petitioner's request.

The issue for determination is whether the Division correctly denied a prior authorization request for a CT scan.

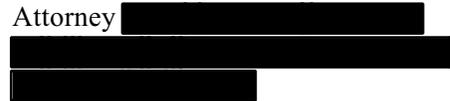
There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:



Respondent:

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

By written submission of:

[Redacted] RN BSN
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County. He is certified for MA.
2. On November 20, 2014, a prior authorization request (#...003) was submitted on the petitioner's behalf for a CT scan of the abdomen, with and without contrast. The request was made by non-hospital provider, Dr. [REDACTED]. The Department's agent denied the request, and written notice of denial was issued to the petitioner on November 22, 2014. The petitioner timely appealed.
3. The Division requires prior authorization for CT and MRI scans performed outside of a hospital. The Division's basis for denial was that the provider did not submit ultrasound results to show that the petitioner needed more advanced imaging the (CT scan) to evaluate abdominal pain. The petitioner had already received an abdominal CT scan within the prior month, so there was inadequate documentation to explain the need for another so soon.
4. The petitioner, age 27, has chronic upper abdominal pain and a history of cryptogenic cirrhosis. He also has a history of portal hypertension, portal vein thrombosis, hepatic encephalopathy, ascites, esophageal varices, kidney stones, pancytopenia (low blood cell count of all blood cell types), and spleen enlargement.
5. The petitioner, who is on a liver transplant waiting list, complained of abdominal pain on or about August 3, 2014, and received an abdominal CT scan. That scan did not show evidence of kidney stones, and the patient was discharged with pain medication. He was then seen in an emergency department on August 11, 2014 for complaints of upper abdominal pain. The treating physician ruled out kidney stones, and pain was controlled during the visit. Lab work was done; the results showed stable pancytopenia, and elevated bilirubin and liver function tests (AST, ALT). *The AST result was 230, which is more than twice the top (37 U/L) of the normal range, and the ALT result was 173, which is more than twice the top (78 U/L) of the normal range.* These lab results were declared in the November 20 authorization request.
6. The petitioner was seen by a physician on August 15, 2014, for a follow-up to his emergency room visit. He was noted to have had a recent normal bowel movement, no fever, nausea, or vomiting. He complained of occasional headaches and dizziness. He appeared tired, mildly jaundiced, and the abdomen was slightly distended, with tenderness in the left lower quadrant. The abdominal CT scan that is the subject of this hearing was performed on August 21, 2014. The authorization request was submitted after the fact, so retroactive authorization was sought here.
7. At the time of the August 20 scan, the petitioner's provider was aware that he is an MA recipient. The petitioner was not told at the time of the service that he would have financial liability for the scan; to the contrary, the provider's staff told him, "your insurance will cover it."

DISCUSSION

Physician-prescribed diagnostic services can be covered by MA, if they are consistent with good medical practice. Wis. Admin Code §§DHS 107.06(1) and 107.25. The Division has now decided to make payment of CT, MRI, and PET scans subject to prior authorization, in an effort to determine if they are being ordered consistent with good medical practice. This prior authorization requirement was announced to providers in an *MA Update*, #2010-92, issued to all providers in October, 2010.

The instant prior authorization request was denied because the Division has determined that, as a transplant waiting list patient, the petitioner could get by with one abdominal CT scan per year, and he

had just received his once-a-year scan during the first week of August 2014. An exception could be made if a less expensive ultrasound showed the need for another CT scan, but such an ultrasound was not administered. The petitioner does not deny that he received an abdominal CT scan within one year of the August 20 scan, nor does he deny the lack of an ultrasound test in August 2014.

To assure uniform statewide coverage treatment of MA patients, the Department has developed policy guidelines for approval of CT, PET, and MRI authorizations. See, policy online at <http://www.medsolutions.com/documents/guidelines/guidelines.php>. The Division cites to several policy sections, and correctly argues that the petitioner's situation met none of the cited policy sections for approval. See, §§ AB 2, AB 31, AB 33, AB 34, and AB 48. Those policy sections lay out the criteria referenced in the paragraph above for transplant-awaiting patients.

However, the petitioner referred to another policy section, which was cited as AB 35 (Elevated Liver Function Levels), from February 21, 2014 through February 15, 2015. That section read, in pertinent part:

CT of the abdomen ...(CPT 74160) ... for:

- Elevation LFTs of AST and/or ALT less than two times normal if:
 - Persistent elevation of AST or Alt after 3 weeks ... [and]
 - Any abnormality or suspicion on Ultrasound
- ***Elevation of LFT's of AST and/or ALT greater than or equal to two times normal***
-

I believe the Department's agent may have not referenced this policy section because elevated AST and ALT is not shocking in a person with known liver disease. However, the policy could have been drafted to contain an exception against approval under §AB 35 for persons with such a diagnosis, but this was not done. Accordingly, I will conclude that the request met the approval guideline at AB 35. There is no legal impediment to the Division having this policy section rewritten for the future.

Even if the authorization request was denied, the petitioner should not be responsible for payment of charges (except for a copayment or deductible) related to the August 20, 2014 CT scan. State code contains the following language on MA patient liability where the person has disclosed his/her MA certification status, and has not agreed to make private payment:

(12) FREEDOM FROM LIABILITY FOR COVERED SERVICES.

(a) Exceptions to cost-sharing.

1. Recipients of MA are liable for payment of any copayment or deductible amount established by the department pursuant to s. 49.45 (18), Stats., for the cost of a service, except as provided in this subsection. The recipient shall pay the copayment or deductible to the provider of service.

...

(b) Freedom from having to pay for services covered by MA. Recipients may not be held liable by certified providers for covered services and items furnished under the MA program, except for copayments or deductibles under par. (a), if the patient identifies himself or herself as an MA recipient and shows the provider the MA identification card.

Note: Recipients seeking nonemergency services from noncertified providers are liable for all charges, unless the services were authorized by the department prior to service delivery.

(c) Prior authorization of services. When a service must be authorized by the department in order to be covered, the recipient may not be held liable by the certified provider unless the prior authorization was denied by the department and the recipient was informed of the recipient's personal liability before provision of the service. In that case the recipient may request a fair hearing. Negligence on the part of the certified provider in the prior authorization process shall not result in recipient liability.

Note: For example, if a provider does not inform a recipient that a procedure or service requires prior authorization, and performs the service before submitting a prior authorization request or receiving an approval and then submits a claim for services rendered which is rejected, the recipient may not be held liable.

Wis. Adm. Code § DHS 104.01(12). Thus, the petitioner should not be liable for the scan cost under any circumstances.

CONCLUSIONS OF LAW

1. The petitioner's prior authorization request for an abdominal CT scan on August 20, 2014, should have been approved, per the Division's MedSolutions policy §AB 35.

THEREFORE, it is

ORDERED

That Dr. [REDACTED] Prevea Health is hereby authorized to provide the petitioner with the requested abdominal CT scan (with and without contrast) from August 20, 2014, and to submit its claim along with a copy of this Decision, to ForwardHealth 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 29th day of April, 2015

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on April 29, 2015.

Division of Health Care Access and Accountability
Attorney [REDACTED]