



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/163000

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 or Division in regard to Medical Assistance (MA)/BadgerCare Plus, a hearing was held on February 17, 2015, by telephone.

The issue for determination is whether the Division correctly denied a prior authorization request for gastric bypass surgery

There appeared at that time 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 written submission of Lora Wiggins, M.D.
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 is a resident of Shawano County. He is certified for MA or BadgerCare Plus (BCP).

2. A prior authorization request for gastric sleeve resection surgery was submitted on the petitioner's behalf on December 5, 2014. The Division issued written notice of the denial on December 19, 2014. That denial prompted the instant hearing request.
3. The Division's basis for denial was that this is not a medical emergency -- the petitioner did not have a co-morbid medical condition that was refractory to treatment.
4. The petitioner, age 31, has a Body Mass Index of 50. He stands six feet, two inches tall, and currently weighs 390 pounds. He diagnoses of morbid obesity, gastro-esophageal reflux disease, asthma, fatty liver disease, hyperlipidemia, and arthritis of his weight-bearing joints. The petitioner has used a CPAP machine nightly for several years to treat his sleep apnea. He stands during his work shifts as a baker.
5. The petitioner has undergone a supervised diet program for over six months, and lost a net of 31 pounds (there were slight upticks in weight during the period). He also reports that he underwent the required bariatric team evaluation. He "passed" the required psychological evaluation.

DISCUSSION

The petitioner requests prior authorization for gastric bypass surgery to control his chronic obesity. Medical assistance covers this procedure through the prior authorization process only if there is a medical emergency. See Wis. Stat. § 49.46(2).

I. HISTORY OF APPROVAL GUIDELINES PRIOR TO DECEMBER, 2005.

Before 2001, authorization guidelines for the bypass procedure made approval nearly impossible, because the Division argued that the "medical emergency" requirement meant that the person's weight had to pose an immediate threat to his or her life. It further contrarily required that if this threat did occur, no prior authorization was necessary. This created a procedure that required prior authorization, but could paradoxically only be authorized and paid without prior authorization.

In 2001, the *Prior Authorization Guidelines Manual*, §117.014.02, changed the approval criteria to the following more attainable requirements: (1) The patient must have acceptable operative risks and be able to participate in treatment and long-term follow-up; *and* (2) have either a Body Mass Index (BMI) of at least 40, or BMI from 35-39 plus a high-risk co-morbid medical condition clinically judged to be life-threatening, such as documented sleep apnea, Pickwickian syndrome, obesity-related cardiomyopathy, or severe diabetes mellitus.

Revised guidelines issued in July, 2005, and March, 2009, attempted to address the inconsistency between the 2001 criteria and other code requirements that more cost-effective means be tried first. *E.g.*, the patient had to participate in a medically-supervised diet plan. The revised guidelines contained approval criteria related to BMI, co-morbid medical conditions that were unresponsive to medical management, documentation of previous supervised weight loss efforts, evaluation by a bariatric team, and attaining age 18.

II. THE PETITIONER DOES NOT SATISFY CURRENT REQUIREMENTS DUE TO LACK OF A COMORBID CONDITION.

The pertinent Wisconsin statute continues to read:

(f) Benefits under this subsection may not include payment for gastric bypass surgery or gastric stapling surgery unless it is performed because of a medical emergency.

Wis. Stat. § 49.46(2)(f).

The *Prior Authorization Guidelines Manual* referenced above was amended again in August, 2011. The change was to provision A1, related to BMI. That provision now reads:

The member has a body mass index greater than 35 with at least one documented high-risk, life-limiting comorbid medical conditions capable of producing a significant decrease in health status that are demonstrated to be unresponsive to appropriate treatment. There is evidence that significant weight loss can substantially improve the following comorbid conditions:

- Sleep apnea.
- Poorly controlled Diabetes Mellitus while compliant with appropriate medication regimen.
- Poorly controlled hypertension while compliant with appropriate medication regimen.
- Obesity-related cardiomyopathy.

See, *ForwardHealth Update*, No. 2011-44 (August, 2011)

The reason that the Division denied the petitioner's request was that the current authorization guidelines require the documented presence of a life-threatening co-morbid condition. None of his diagnoses other than morbid obesity are life-threatening conditions. There is insufficient evidence in the record to establish that the CPAP machine is not controlling his sleep apnea. This is a sufficient basis for denial of the surgery request. The Division properly applied the current guidelines here, and denied this authorization request. The petitioner may submit a new authorization request if his condition deteriorates in the future.

CONCLUSIONS OF LAW

Petitioner is not currently eligible for MA authorization and payment for gastric bypass surgery.

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 Madison,
Wisconsin, this 27th day of February, 2015

\sNancy J. Gagnon
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 27, 2015.

Division of Health Care Access and Accountability