



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/163275

PRELIMINARY RECITALS

Pursuant to a petition filed January 14, 2015, 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 March 17, 2015.

The issue for determination is whether the DHCAA correctly denied petitioner's prior authorization (PA) request for Copaxone 40mg.

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: 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 is a resident of Kenosha County.
2. On November 6, 2014 [REDACTED] Pharmacy submitted a PA request for petitioner to receive Copaxone 40 mg. She is not currently being treated with Copaxone 40mg.

3. On November 22, 2014 the DHCAA issued a notice to petitioner stating that the PA request was denied because the petitioner did not meet the Wisconsin Medicaid guidelines for approval.

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 Copaxone 40 mg.

Effective October 1, 2004 the DHCAA 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 §DHS 107.10(2)(d). Copaxone 40 mg is not on the PDL. See <https://www.forwardhealth.wi.gov/WIPortal/Tab/42/icscontent/provider/medicaid/pharmacy/resources.htm#page#>. Thus, she must request PA for it.

In June 2014 the DHCAA updated its policy about the PDL. See *ForwardHealth Update*, No. 2014-39, available online at <https://www.forwardhealth.wi.gov/kw/pdf/2014-39.pdf>. In this Update, the DHCAA specifically addressed coverage for Copaxone 40mg:

Clinical Criteria for Members Not Currently Being Treated with Copaxone® 40 mg
Clinical criteria for approval of a PA request for Copaxone® 40 mg for members **not** currently being treated with Copaxone® 40 mg are **all** of the following:

- The member and prescriber will follow established monitoring guidelines outlined in the FDA-approved patient labeling.
- The member is currently taking or has previously taken Copaxone® 20 mg.
- While taking Copaxone® 20 mg, the member's MS was stable and well-controlled, not having disease-progressing symptoms.
- While taking Copaxone® 20 mg, the member experienced significant injection site reactions that could not be managed with conventional techniques (e.g., injection site rotation, icing, or analgesics).

Prior authorization requests for Copaxone® 40 mg must include detailed documentation regarding why the member is unable to take Copaxone® 20 mg. Medical records should be provided, as necessary, to support the need for Copaxone® 40 mg. Non-adherence to previous MS treatment will not be considered as a criterion prohibiting the use of the preferred agent, Copaxone® 20 mg. In addition, member or prescriber preference for Copaxone® 40 mg will not be considered as a criterion prohibiting the use of the preferred agent, Copaxone® 20 mg.

See *Id.* at p.14. Another Update in October 2014 stated that medical records *must* be submitted with the PA request to support the need for Copaxone® 40 mg. See *ForwardHealth Update*, No. 2014-55, available online at <https://www.forwardhealth.wi.gov/kw/pdf/2014-55.pdf>.

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.

In this case, the DHCAA denied the PA request because the information submitted did not show that petitioner met the PA criteria. Specifically, the PA request states that the Copaxone 40mg was requested because petitioner was having compliance issues with daily injections. As stated above, non-adherence to previous treatment will not be considered as a criterion prohibiting the use of the preferred agent, Copaxone® **20 mg**. In addition, member or prescriber preference for Copaxone® 40 mg will not be considered as a criterion prohibiting Copaxone® **20 mg**. Further, the provider did not submit any medical records on petitioner's behalf to justify the request.

The petitioner was unable to justify the request except to state that the Copaxone 20mg is dangerous to use twice a day. She had no medical studies to prove up that statement and no medical documentation to justify her case. The end result is that the PA has not been justified as medically necessary. 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 they can substantiate its medical necessity.

CONCLUSIONS OF LAW

The DHCAA correctly denied petitioner's prior authorization (PA) request for Copaxone 40mg.

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 23rd day of April, 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 April 23, 2015.

Division of Health Care Access and Accountability