



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MNP/163432

PRELIMINARY RECITALS

Pursuant to a petition filed January 20, 2015, under Wis. Stat. § 49.45(5), 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 February 17, 2015, at Waukesha, Wisconsin.

The issue for determination is whether the Department correctly denied the petitioner’s prior authorization request for the drug Midrin because it is a non-covered drug.

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 Letter: Lisa Reese
Division of Health Care Access and Accountability

Madison, WI

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # ) is a resident of Waukesha County.
2. The petitioner’s provider submitted a prior authorization request for the drug Midrin.

3. The Department of Health Services (DHS) denied the prior authorization request because Midrin and its generic equivalents are not covered under the BadgerCare Plan. The reason the plan does not cover Midrin or its' generics is that it is considered to be "less than effective" by the FDA.
4. The petitioner maintains that there are no alternative medications for her migraines because she is a recovering drug addict, and in a methadone maintenance program. The petitioner submitted a letter from her methadone clinic stating that because she is taking methadone, she cannot take the drug Fioricet, which is a barbiturate. The petitioner is cycling off of methadone.

DISCUSSION

The Department 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 by the Division in advance of receiving the service. Finally, some services and equipment are never covered by the MA program. Wis. Admin. DHS §§ 107.10(4) states:

Non-Covered Services. The department may create a list of drugs or drug categories to be excluded from coverage, known as the Medicaid negative drug list. These non-covered drugs may include drugs determined to be "less than effective" by the U.S. food and drug administration, drugs not cover by 42 USC 1396r-8, drugs restricted under 42 USC 1396r-8(d)(2) and experimental or other drugs which have no medically accepted indications.

In this case the petitioner does not dispute that Midrin is a non-covered drug. Rather, the petitioner argues that she is in a methadone maintenance program, and that she is unable to take any alternative drugs in combination with methadone. The petitioner testified that she is transitioning off of methadone as quickly as she can, but that once off of Methadone, she still prefers Midrin to treat her migraines.

I note that the letter that the petitioner provided from a physician assistant at the methadone clinic states that the petitioner is unable to take the drug Fioricet with methadone. The letter does not mention any other drugs. I believe that there are alternate medications or treatment options available for migraines beyond these two drugs. Regardless, even if there are no alternatives, this drug is uncovered drug, and thus unavailable to the petitioner as a BadgerCare recipient.

CONCLUSIONS OF LAW

The department correctly denied the petitioner's prior authorization for Midrin because Midrin and its generics are non-covered drugs.

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 23rd day of February, 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 February 23, 2015.

Division of Health Care Access and Accountability