



**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

█ █
█
█

DECISION

HMO/163692

PRELIMINARY RECITALS

Pursuant to a petition filed February 02, 2015, under Wis. Stat. § 49.45(5)(a), 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 March 17, 2015, at Madison, Wisconsin.

The issue for determination is whether the HMO erred in its denial of the requested breast reduction surgery.

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: Elizabeth Bartlett
iCare
1555 N. Rivercenter Drive
Suite 206
Milwaukee, WI 53212

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Dane County.
2. Petitioner's provider requested a PA for breast reductions surgery from HMO iCare on 12/9/14.
3. The amount of tissue proposed to be removed from each breast does not meet the Schnur criteria.

4. The HMO denied the request by letter dated 12/17/14.
5. Petitioner appealed.

DISCUSSION

Under the discretion allowed by Wis. Stat., §49.45(9), the Department of Health Services (DHS) now requires MA recipients to participate in HMOs. Wis. Adm. Code, §DHS 104.05(2)(a). MA recipients enrolled in HMOs must receive medical services from the HMOs' providers, except for referrals or emergencies. §DHS 104.05(3).

The criteria for approval by a managed care program contracted with the DHS are the same as the general MA criteria. See Wis. Adm. Code, §DHS 104.05(3), which states that HMO enrollees shall obtain services "paid for by MA" from the HMO's providers. Just as with regular MA, when the DHS denies a grievance from an HMO recipient, the recipient can appeal the denial within 45 days. Wis. Stat., §49.45(5), Wis. Adm. Code, §DHS 104.01(5)(a)3. That is what occurred here when the agency denied petitioner's prior authorization (PA) request for breast reduction surgery.

A service, like breast reduction surgery, is medically necessary if it is, among other things, "[r]equired to prevent, identify or treat a recipient's illness, injury or disability...." Wis. Adm. Code, §DHS 101.03(96m)(a). To help determine whether a service is medically necessary, the HMO can use policies under its health plan to set criteria for some requested services.

BadgerCare Plus HMOs and Medicaid SSI HMOs may develop PA guidelines that differ from fee-for-service guidelines. However, the application of such guidelines may not result in less coverage than fee-for-service. Thus, when the DHS reviewed the matter after petitioner requested this hearing, the DHS's Medical Consultant used the guidelines found in the *MA Prior Authorization Guidelines Manual*. The *Prior Authorization Guidelines Manual*, §117.006.02, requires the following for approval of breast reduction surgery:

- 1) Documentation that conservative treatment has been unsuccessful in alleviating clinical symptoms with a trial period of at least 6 months; *and*
- 2) An appropriate amount of breast tissue must be removed from each breast. (Determine by using criteria set forth by P.L. Schnur, MD, et al MS Reduction Mammoplasty: Cosmetic [sic] or Reconstructive Procedure? *Ann Plast Surg* 1991 27:232-237.); *and*
- 3) Documentation of at least 4 medical signs/symptoms of macromastia, such as: postural backache (ICD-0 724.5, 781.9), upper back and neck pain (ICD-9 724.1, 723.1), chronic breast pain due to breasts (ICD-9: 611.71), "true hypertrophy" (ICD-9 611.1), intertrigo (severe and intractable inflammation and/or infection in the fold beneath the breasts) (ICD-9 695.89), shoulder grooving and kyphosis (ICD-9 737.10), gross asymmetry of the breasts or absence of a breast, resulting from resection of the opposite breast due to cancer or infection.)

The Medical Consultant determined that petitioner did not meet these Guidelines because, at least in part, the amount of tissue proposed to be removed did not meet the Schnur criteria. Petitioner failed to rebut this assertion at hearing. Furthermore, the respondent argued that other medical conditions were more likely the cause of the pain that petitioner has experienced. Petitioner's argument was unspecific and suggested only that reduction was necessary because petitioner's breasts "are huge." The records also suggest that petitioner was, at least, not entirely compliant with conservative measures including exercise, physical therapy, and weight management.

Based on the foregoing, I conclude that, at the time the PA request was made the denial of the surgery was correct.

CONCLUSIONS OF LAW

The agency correctly denied petitioner's prior authorization request for breast reduction surgery because she has not met the policy requirements for that surgery.

THEREFORE, it is

ORDERED

That the petition for review herein be 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 24th day of April, 2015

\sJohn P. Tedesco
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 24, 2015.

iCare
Division of Health Care Access and Accountability