



FH  
[REDACTED]

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

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In the Matter of:

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/164205

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 23, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Office of the Inspector General ["OIG"] in regard to Medical Assistance ["MA"], a Hearing was held vis telephone on April 8, 2015. The Hearing for this matter was held at the same time as the Hearing for the following closely related matter concerning the same petitioner: MPA-164313.

The issue for determination is whether OIG was correct to deny Prior Authorization ["PA"] for MA payment for Magnetic Resonance Imaging ["MRI"] of the lumbar spine without contrast for petitioner.

There appeared at that time via telephone the following person:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

BY: Marcie Oakes, RN, Registered Nurse Consultant [Ms. Oakes did not appear at the April 8, 2015 Hearing but submitted a letter dated March 5, 2015 with attachments.]

Office of the Inspector General  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

Sean P. Maloney  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]; 53 years old) is a resident of Columbia County, Wisconsin.
2. Petitioner has significant uncomfortable paresthesias in both his right arm and leg; numbness and tingling in his right arm involves the entire arm and is intermittent (often waking him up); paresthesias in his right leg involves his right buttocks and lateral thigh and calf; he also has neck and chronic low back pain
3. On February 17, 2015 petitioner's provider, Dr. Bradley K. Schnee of Dean Clinic in Portage, Wisconsin, requested PA (P.A. # [REDACTED]; MedSolutions file # [REDACTED]) for MA coverage of an MRI of the lumbar spine without contrast for petitioner.
4. OIG denied P.A. # [REDACTED] for MA coverage of an MRI of the lumbar spine without contrast for petitioner; OIG sent a letter to petitioner dated February 17, 2015 and entitled *BadgerCare Plus Notice of Appeal Rights* informing him of the denial.

### DISCUSSION

As with any eligibility denial, the burden is on petitioner to show that he is eligible for the requested services. *Lavine v. Milne*, 424 U.S. 577, 583-584 (1976). Petitioner has failed to make such a showing.

By law, MA pays only for medically necessary and appropriate health care services when provided to currently eligible MA recipients. Wis. Admin. Code § DHS 107.01(1) (February 2014); See also, Wis. Stat. §§ 49.46(2) & 49.47(6) (2013-14). In order for a service to be *medically necessary* it must meet several specific requirements. See, Wis. Admin. Code § DHS 101.03(96m) (December 2008).

In determining whether to approve or disapprove a request for PA the limitations imposed by pertinent federal or state statutes, rules, regulations, or interpretations must be considered. Wis. Admin. Code § DHS 107.02(3)(e)9. (February 2014). Written state policy limitations provide that MedSolutions, a private radiology benefits manager, is authorized to administer PA MRI's. MedSolutions uses approved national clinical guidelines for imaging services when making PA determinations. *ForwardHealth Update* October 2010 No. 2010-92. Those national clinical guidelines require that an MRI cannot be approved unless there has been a failure of a recent (within 3 months) 6-week trial of a physician-directed treatment and/or observation. MedSolutions *Spine Imaging Guidelines* SP-3 & SP-6(attachment #5 to OIG March 5, 2015 summary letter).<sup>1</sup> There is no evidence in the record of this matter that petitioner has failed a recent (within 3 months) 6-week trial of a physician-directed treatment and/or observation. Therefore, OIG's denial must be sustained.

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<sup>1</sup> There is an exception to this require if certain "Red Flag Indications" are present such as: motor weakness; aortic aneurysm or dissection; cancer; cauda equine syndrome; fracture; or, infection. MedSolutions *Spine Imaging Guidelines* SP-1.2 (attachment #5 to OIG March 5, 2015 summary letter). There is no evidence in the record of this matter that petitioner has any of those Red Flag Indications.

**CONCLUSIONS OF LAW**

For the reasons discussed above, OIG was correct to deny PA for MA payment for an MRI of the lumbar spine without contrast for petitioner.

**NOW, THEREFORE, it is**

**ORDERED**

That the petition for review herein be and the same is hereby 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 23rd day of April, 2015

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\sSean P. Maloney  
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