



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MPA/164310

PRELIMINARY RECITALS

Pursuant to a petition filed February 24, 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 in regard to Medical Assistance, a hearing was held on March 24, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the Petitioner met the approval criteria for Medicaid coverage of a type of gastric bypass surgery called Lap Sleeve Gastrectomy.

NOTE: The record was held open to give the Petitioner an opportunity to submit documentation from his primary care physician. On April 2, 2015, Petitioner's physician, [REDACTED], submitted a letter. It has been marked as Exhibit 4 and entered into the record.

According to [REDACTED]'s letter, the primary billing was paid for by another source. I called the Respondent and spoke to him on April 7, 2015, at which time the Respondent indicated that Medicare covered the primary cost of the surgery and that he was asking Medicaid to cover the secondary billing.

I reminded the Respondent that [REDACTED], the DHS physician consultant, had indicated in her letter (Exhibit 2) that if Medicare covered the surgery, that Medicaid would cover the secondary billing, because Medicare has different eligibility criteria for bariatric surgery. A copy of [REDACTED]'s letter will be sent to the Petitioner with a copy of this decision.

Petitioner should give a copy of this letter and [REDACTED]'s letter to his health care providers to get the outstanding bill taken care of.

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: OIG by letter
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:
Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On January 6, 2015, the [REDACTED] of Wisconsin submitted, on behalf of the Petitioner, a request for prior authorization of a Lap Sleeve Gastrectomy at a cost of \$4,500.00. (Exhibit 3, pg. 4)
3. On January 15, 2015, the Department of Health Services (DHS) sent the Petitioner and the [REDACTED] of Wisconsin notices advising them that the request for authorization was denied. (Exhibit 3, pgs. 59-62)
4. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on February 24, 2014. (Exhibit 1)
5. On March 17, 2015, the Petitioner underwent the Lap Sleeve Gastrectomy and lost 60 pounds in the seven days between the date of surgery and the date of hearing. (Testimony of Petitioner)
6. The Petitioner is 36 years old. At the time of the prior authorization request, the Petitioner had a body mass index of 67. (Exhibit 3, pg. 10)
7. The Petitioner suffers from sleep apnea but treats the condition with the use of a C-PAP machine. (Testimony of the Petitioner)
8. The Petitioner has “mild” diabetes, but does not use medication, because he had an adverse reaction to it. (Testimony of the Petitioner)
9. The Petitioner has a family history of heart disease and is undergoing preventative treatment that includes medication designed to help his heart pump more blood to his body. (Testimony of Petitioner)
10. The Petitioner also has high-blood pressure that is managed with medication. (Testimony of the Petitioner)

DISCUSSION

The petitioner requests prior authorization for a gastric bypass procedure, called Lap Sleeve Gastrectomy, to reverse his morbid obesity. DHS denied coverage because it determined that the Petitioner does not have any co-morbid conditions that are unresponsive to appropriate treatment and therefore, pose an immediate threat to the Petitioner’s life.

Under Wis. Stat. § 49.46(2)(f), Medicaid may not pay for, “gastric bypass surgery or gastric stapling surgery unless it is performed because of a medical emergency.”

In August 2011, DHS issued guidelines defining the meaning “medical emergency” in the context of approving gastric bypass surgery. The new approval criteria are found in *ForwardHealth Update No. 2011-44* (August 2011). The relevant portions of that update were included in Exhibit 2, attachments 1 and 2, and state the following:

The approval criteria for prior authorization (PA) requests for covered bariatric surgery procedures include *all* of the following:

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.

The Petitioner had a body mass index greater than 35 and he likely did have the co-morbid conditions listed above: sleep apnea, high blood pressure, diabetes and cardiomyopathy (irregular/abnormal heart muscle). However, all of those conditions were being managed with medication or other more conservative treatments. Because the Petitioner's co-morbid conditions were responsive to appropriate treatment and did not pose an immediate risk to the Petitioner's health, the Petitioner did not meet approval criteria for the requested surgery. As such, DHS correctly denied prior authorization for the surgery.

HOWEVER, Medicare and Medicaid have different criteria for determining whether bariatric surgery is a covered service.

As discussed above, the letter from Petitioner's physician indicated that the only outstanding medical bill associated with the bariatric surgery is a deductible amount. Petitioner confirmed that this is a *Medicare* deductible amount. DHS's physician consultant indicated in her letter that if Medicare did cover the surgery, "**Medicaid will cover the secondary billing, regardless of prior authorization status**". (*Emphasis added* See Exhibit 2)

So, the Petitioner's providers will have to submit a bill to Medicaid for coverage of the secondary billing.

See Wis. Admin. Code §106.03(7)(b) and (c) below:

- (b) **Before submitting a claim to MA for the same services, a provider shall properly seek payment for the services provided to an MA recipient from medicare or, except as provided in par. (g), another health care plan if the recipient is eligible for services under medicare or the other health care plan.**
- (c) **When benefits from medicare, another health care plan or other third party payer have been paid or are expected to be paid, in whole or in part, to either the provider or the recipient, the provider shall accurately identify the amount of the benefit payment from medicare, other health care plan or other third party payer on or with the bill to MA, consistent with the department's claims preparation, claims submission, cost avoidance and post-payment recovery instructions under s. [DHS 108.02 \(4\)](#). The amount of the medicare, health care plan or other third party payer reimbursement shall reduce the MA payment amount.**

CONCLUSIONS OF LAW

The Petitioner does not meet approval criteria for coverage of a type of gastric bypass surgery called Lap Sleeve Gastrectomy.

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.

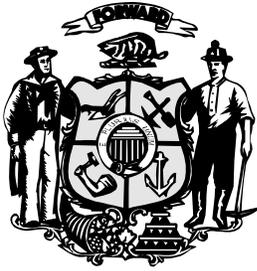
APPEAL TO COURT

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 9th day of April, 2015.

\sMayumi M. Ishii
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 9, 2015.

Division of Health Care Access and Accountability