



FH

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

In the Matter of:

████████████████████
████████████████████
████████████████████

DECISION

████████████████████

PRELIMINARY RECITALS

Pursuant to a petition filed February 27, 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 ["DCHAA"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on March 19, 2015.

The issue for determination is whether petitioner is eligible for payment by the MA program for Laparoscopic Gastric Bypass/Roux-En-Y surgery.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

████████████████████
████████████████████
████████████████████

Respondent:

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

BY: ██████████ MD, Chief Medical Officer [██████████] did not appear at the March 19, 2015 Hearing but submitted letters dated March 10, 2015 and March 17, 2015 with attachments.]

Division of Health Care Access and Accountability
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

[REDACTED]

FINDINGS OF FACT

1. Petitioner ([REDACTED] old) is a resident of La Crosse County, Wisconsin.
2. Petitioner's provider (Gunderson Clinic Ltd of LaCrosse, Wisconsin) requested Prior Authorization ["PA"] for MA coverage of Laparoscopic Gastric Bypass/Roux-En-Y surgery for petitioner by a *Prior Authorization Request Form (PA/RF)* dated February 3, 2015 (PA # [REDACTED] at a total cost of \$13,000.00.
3. DCHAA denied PA request # [REDACTED] and sent a letter to petitioner dated February 10, 2015 and entitled *BadgerCare Plus Notice of Appeal Rights* informing her of the denial.
4. Petitioner is 5 feet 7 inches tall and weighs about 350 pounds which makes her Body Mass Index ["BMI"] about 54.8.
5. Petitioner has a diagnoses of morbid obesity, hypothyroidism, asthma, polycystic ovary syndrome ["PCOS"], carpal tunnel syndrome, and depression.

DISCUSSION

MA may only reimburse providers for medically necessary and appropriate health care services and equipment listed in sections 49.46(2) and 49.47(6)(a) of the Wisconsin Statutes, as implemented by chapter DHS 107 of the Wisconsin Administrative Code. Some services and equipment are covered if a PA request is submitted and approved in advance of receiving the service. Some services and equipment are never covered by the MA program.

Section 49.46(2)(f) of the Wisconsin Statutes prohibits payment for gastric by-pass surgery unless it is performed because of a medical emergency as determined by Wisconsin Department of Health Services ["DHS"]. Wis. Stat. § 49.46(2)(f) (2013-14); See also, Wis. Admin. Code § DHS 107.06(4)(h) (February 2014).

DHS has interpreted the *medical emergency* requirement to include several criteria, one of which is that the person must have at least one documented high-risk, life-limiting comorbid medical condition capable of producing a significant decrease in health status that is demonstrated to be unresponsive to appropriate treatment. *ForwardHealth Update*, August 2011, No. 2011-44, found online at: <https://www.forwardhealth.wi.gov/kw/pdf/2011-44.pdf> .

The evidence in the record of this matter is that petitioner does not have at least one documented high-risk, life-limiting comorbid medical condition capable of producing a significant decrease in health status that is demonstrated to be unresponsive to appropriate treatment. It is true that in addition to obesity petitioner's suffers from hypothyroidism, asthma, PCOS, carpal tunnel syndrome, and depression -- but these are not high-risk, life-limiting comorbid medical condition capable of producing a significant decrease in health status that have been demonstrated to be unresponsive to appropriate treatment. *Cormorbid* means that in addition to obesity the person must have another medical condition that is high-risk, life-limiting, capable of producing a significant decrease in health status, and has been demonstrated to be unresponsive to appropriate treatment.

[REDACTED]

CONCLUSIONS OF LAW

For the reasons discussed above, petitioner is not eligible for payment by the MA program for Laparoscopic Gastric Bypass/Roux-En-Y surgery.

THEREFORE, it is

ORDERED

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.

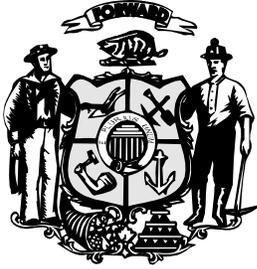
APPEAL TO COURT

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 28th day of April, 2015

\sSean P. Maloney
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 28, 2015.

Division of Health Care Access and Accountability