



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
Redact

DECISION

MPA/164797

PRELIMINARY RECITALS

Pursuant to a petition filed March 20, 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 (DHCAA or Division) in regard to Medical Assistance (MA)/BadgerCare Plus (BCP), a hearing was held on May 5, 2015, by telephone. The hearing record was held open for 10 days for submission of a doctor's statement from the petitioner, which was received.

The issue for determination is whether the Division correctly denied a prior authorization request for bilateral foot orthotics.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
Redact

Respondent:

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

By written submission of [Redacted], OTR
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Dane County. She is certified for MA or BCP.

2. On January 27, 2015, a prior authorization request was submitted on the petitioner's behalf for foot orthotics. The requested items cost \$1,170. The Division denied the authorization request on February 3, 2015.
3. The Division's basis for denial was that the petitioner's feet do not fit into any of the permissible categories for coverage of orthopedic shoes or orthotics. The requested orthotics would support the petitioner's arches.
4. The petitioner, age 29, has diagnoses of torn right medial meniscus (knee), degenerative disc disease, hammer toes, history of right ankle sprains, and history of two brain surgeries for Chiari malformation type 1. She has a cavus foot (high arch) that collapses at midstance with mild heel eversion (heel tilting away from body midline). The latter condition can be due to tight calf muscles or other inflexible soft tissue. The petitioner has undergone physical therapy and used over-the-counter orthotics in the past, without receiving adequate relief for foot discomfort.
5. The petitioner is not suffering from a post-surgery condition. Her shoes are the same size. She does not have differing leg lengths, or a rigid foot deformation. Her shoes are not attached to a brace or bar.

### DISCUSSION

The Division denied the petitioner's request for foot orthotics. The state Medicaid code language states:

(2) COVERED SERVICES.

...

(c) ...

2. Orthopedic or corrective shoes. These are any shoes attached to a brace for prosthesis; mismatched shoes involving a difference of a full size or more; or shoes that are modified to take into account discrepancy in limb length or a rigid foot deformation. *Arch supports are not considered a brace.* Examples of orthopedic or corrective shoes are supinator and pronator shoes, surgical shoes for braces, and custom-molded shoes.

...

(4) OTHER LIMITATIONS.

...

Orthopedic or corrective shoes or foot orthoses shall be provided only for postsurgery conditions, gross deformities, or when attached to a brace or bar. These conditions shall be described in the prior authorization request.

*[emphasis added]*

Wisconsin Administrative Code § DHS 107.24(4)(f)

Medical assistance regulations specifically prohibit coverage of foot orthoses for flattened arches, incomplete dislocation of metatarsalgia, arthritis with no associated deformities, or hypoallergenic conditions. Wis. Adm. Code, § DHS 107.24(5)(a)1.

The petitioner has previously used over-the-counter orthotics and physical therapy to attempt relief of her foot and knee pain. Her physician believes that trying customized foot orthotics is the next logical step. That is probably correct. The problem is that state code specifically prohibits MA payments for foot orthotics unless one of the conditions listed in § DHS 107.24 (2)(c)2 is present. The petitioner's foot problem does not appear to be a "rigid foot deformation." Therefore, denial of her authorization request was correct.

**CONCLUSIONS OF LAW**

1. Denial of the requested orthoses was correct, as the petitioner’s condition does not meet the criteria at Wis. Admin. Code § DHS 107.24(2)-(4).

**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 Madison,  
Wisconsin, this 19th day of June, 2015

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\sNancy J. Gagnon  
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 June 19, 2015.

Division of Health Care Access and Accountability