



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/165229

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 08, 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 April 23, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the Department correctly denied the petitioner's medical prior authorization request for Ensure.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

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█

Respondent:

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

By Letter: Lynn Radmer

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

**ADMINISTRATIVE LAW JUDGE:**

Corinne Balter  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner is a resident of Milwaukee County.
2. On March 31, 2015 Home Care Medical submitted a prior authorization request for Ensure.

3. The petitioner is diagnosed with advanced Alzheimer's/dementia. The petitioner's daughter testified that the petitioner also had Parkinson's, and issues related to tremors. The documentation on the prior authorization request did not include that information.
4. On April 1, 2015 the Department sent the petitioner a notice stating that they denied the prior authorization request for Ensure.
5. On April 8, 2015 the Division of Hearings and Appeals received the petitioner's request for fair hearing.

### **DISCUSSION**

The Wisconsin Administrative Code, §DHS 107.10(2)(c) requires providers to seek prior authorization for food supplements. Products that do not meet the §107.10(2)(c) criteria are denied. §DHS 107.10(2)(c) states that medically necessary nutritional supplements used for the treatment of severe health conditions such as pathologies of the gastrointestinal tract or metabolic disorders can be covered by MA. The Department drafted criteria for reviewing prior authorization requests for such supplements.

The prior authorization guidelines for food supplements such as Ensure Plus were changed in January, 2011; providers were notified in Forward Health Update no. 2011-88, effective January 15, 2012. A supplement can be approved where the following disorders exist:

- A severe swallowing disorder due to oral-pharyngeal tissue injury, trauma, excoriation (i.e., lesions, mucositis), or defect.
- Pathology of the gastrointestinal (GI) tract that prevents digestion, absorption, or utilization of nutrients that cannot otherwise be medically managed.
- Transition from tube feeding (enteral or parenteral) to an oral diet.

In addition, the person must require the supplement because regular foods cannot be ingested to provide sufficient nourishment. The policy specifically disallows coverage for swallowing disorders that are behavioral, neurological, or psychological in nature and for treatment of a reduced appetite. The Department denied the request because documentation did not support the need for the supplement.

I conclude that the denial in this case was correct. The petitioner's daughter testified that the petitioner is physically able to consume foods. The petitioner is a picky eater, but seems to like mashed potatoes and milk shakes. She also eats other foods. The doctor's request states, "the requested product will supplement the member's diet because the member can consume altered or regular-consistency foods (soft or pureed foods) and beverages." The petitioner's daughter clearly testified that ensure benefits her mother through increased calories given her mother's conditions and body mass index (BMI). DHS highlights that the petitioner is 5 foot 3 inches tall and weighs 124 pounds. This would be in the normal BMI range, not underweight as the petitioner's daughter testified. Although I believe that this petitioner would most likely benefit from ensure or another similar nutritional supplement, the Department is correct that in this case ensure is not covered under the administrative code criteria. There is no evidence that the petitioner has a severe swallowing disorder, an issue with her GI tract that would prevent the digestion and absorption of nutrients or that she is transition from tube feeding to an oral diet. Thus, ensure is not a covered product in this case.

### **CONCLUSIONS OF LAW**

The Department correctly denied the petitioner's prior authorization request for ensure.

**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 28th day of April, 2015

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\sCorinne Balter  
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 28, 2015.

Division of Health Care Access and Accountability