FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

MPA/165235

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 Department of Health Services (DHS), in regard to Medical Assistance (MA), a hearing was held on April 23, 2015, at Milwaukee, Wisconsin. The record was held open for 3 weeks to allow petitioner time to consult with her provider to see if there was any additional information. Nothing was received.

The issue for determination is whether the petitioner is entitled to MA reimbursement for a bilateral breast reduction.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By written submittal of: Dr. Lora Wiggins
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:
Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.

2. On February 23, 2015, a prior authorization request was submitted on the petitioner's behalf for bilateral breast reduction surgery. The DHS issued written notice of denial on February 26, 2015.

3. The DHS's basis for denial was that the surgery was not shown to be medically necessary.

4. The petitioner, age 67, is 62" tall and weighs 148 lbs. Calculated body surface area (BSA) is 1.68m2. Estimated tissue removal is 320 grams from each breast.

DISCUSSION

The MA program pays for a variety of medical services listed in federal and state law, but does not pay for all types of medical services. See, Wis. Stat. §49.46(2); Wis. Admin. Code §DHS 107.01, *et seq*. Some covered services must receive prior authorization; one of the prior authorization criteria is that the procedure must be "medically necessary" to treat the patient's condition. *Id*., (e)(1).

A service is medically necessary if it is "required to prevent, identify or treat a recipient's illness, injury or disability…." Wis. Adm. Code, §DHS 101.03(96m)(a). To help determine whether a service is medically necessary, the DHS has issued guidelines found in the *Prior Authorization Guidelines Manual.*

The *Prior Authorization Guidelines Manual,* §117.006.02, requires the following for approval of breast reduction surgery:

1) Documentation that conservative treatment has been unsuccessful in alleviating clinical symptoms with a trial period of at least 3 months; *and*
2) An appropriate amount of breast tissue must be removed from each breast. (Determine by using criteria set forth by P.L. Schnur, MD, et al MS Reduction Mammoplasty: Costmetic [sic] or Reconstructive Procedure? Ann Plast Surg 1991 27:232-237.); *and*
3) Documentation of at least 4 medical signs/symptoms of macromastia, such as: postural backache (ICD-0 724.5, 781.9), upper back and neck pain (ICD-9 724.1, 723.1), chronic breast pain due to breasts (ICD-9: 611.71), "true hypertrophy" (ICD-9 611.1), intertrigo (severe and intractable inflammation and/or infection in the fold beneath the breasts) (ICD-9 695.89), shoulder grooving and kyphosis (ICD-9 737.10), gross asymmetry of the breasts or absence of a breast, resulting from resection of the opposite breast due to cancer or infection.

The DHS denied this request because it found that petitioner did not meet either of the 3 criteria above. Using the Schnur scale, tissue to be removed should 350 grams. The PA suggests only 320 grams. There is no record of at least 3 months of conservative treatment, nor documentation of a least 4 signs of macromastia. Further, her provider's notes indicate that the breast reduction only provides a slight chance of decreasing her chronic pain.

The record was held open for 3 weeks to allow petitioner time to consult with her provider to see if there was any additional information that could be supplied to show that she met the criteria. Nothing was received. However, if petitioner develops better documentation, she can always submit a new PA request.

Based on the above, the DHCAA was correct to deny prior authorization for payment by the MA program for breast reduction surgery as there is insufficient evidence to conclude that the surgery is a medical necessity for the petitioner at this time. I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The DHS correctly denied the requested breast reduction surgery because the request does not document that petitioner meets the approval criteria.

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 July, 2015

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\sKelly Cochrane
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 July 9, 2015.

Division of Health Care Access and Accountability