



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MGE/165523

PRELIMINARY RECITALS

Pursuant to a petition filed April 18, 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, a hearing was held on June 2, 2015, by telephone. The record was held open for 2 days for the Division to file its initial response to the appeal; that document was received.

The issue for determination is whether the Division correctly denied an HMO Continuity of Care Exemption Request filed by the petitioner.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By written submission of Lucy Miller (post-hearing)
Division of Health Care Access and Accountability
Madison, WI

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Trempealeau County. She is certified for BadgerCare Plus (BCP).

2. BCP recipients in Trempealeau County receive their care through an HMO. The HMO must furnish the same benefits to the petitioner as regular, fee-for-service MA. Prior to commencement of her BCP coverage, the petitioner sought out treatment (one visit) from [REDACTED], a family practice physician. The petitioner asked her BCP HMO to pay for continuation of care with [REDACTED]. The HMO (Gunderson) denied the request, as [REDACTED] is an out-of-network provider.
3. The petitioner filed a *Continuity of Care Exemption Request* with the Department of Health Services on March 10, 2015. The Department mailed written notice of denial of the *Request* on March 18, 2015.
4. In the March 18 denial, the Department offered the following rationale: Continuity of care exemptions are only granted to members newly enrolled in an HMO who are involved in specific short term treatment for a particular condition. Members who require continued long term treatment of a particular condition must receive care from an HMO.
5. In an authorized post-hearing submission, the Department also advised that it does not give HMO exemptions for primary care physicians, as an HMO exemption is meant for short-term specialist care. Because [REDACTED] is a family practice doctor, rather than a specialist, an exemption could not be granted. *See*, submission by Lucy Miller, RN.
6. The petitioner, age 32, has a long history of menorrhagia (abnormally heavy menstrual bleeding). She has undergone many therapeutic interventions, including removal of a large fibroid and an intra-uterine polyp, and hormonal interventions. She was bothered by side effects from oral contraceptive pills (*e.g.*, migraines). Treatment with a GnRH agonist or hysterectomy has not been tried.
7. The petitioner desires to be treated for menorrhagia via Natural Procreative Technology (NaPro technology) with [REDACTED]. The treatment is estimated as lasting for three to six months. The primary physicians in the petitioner's HMO do not offer this specific treatment.
8. The petitioner's current HMO has a choice of both family practice physicians and gynecologists in its provider roster.

DISCUSSION

Low-income, non-disabled persons who are on the Wisconsin Medicaid or BadgerCare Plus programs in certain Wisconsin counties are mandated to receive their Medicaid or BadgerCare Plus benefits through an HMO. The HMOs are under contract to provide the same services as those provided to persons on straight, fee-for service Medicaid or BadgerCare Plus, as stated in the HMO contract. MA recipients enrolled in HMOs must receive medical services from the HMOs' providers, except for referrals or emergencies. §DHS 104.05(3). If a recipient knowingly uses a provider outside of her HMO for services, she is normally liable for those services. *Id.*

In this case, the petitioner requested an exemption to use a non-HMO provider for treatment of her menorrhagia via Na-Pro therapy. She apparently saw the non-HMO provider only once, which does not make this a "continuity of care" issue in common sense terms. In any event, NaPro involves having the patient submit to blood draws on specific days in her cycle, to determine hormone levels. The follow-up to this information may include use of progesterone or laparoscopic surgery for endometriosis excision. *See*, <http://naprotechnology.com/>. The NaPro website gives no specifics as to how *menorrhagia* is treated after hormone levels are studied, other than the progesterone or surgery mentioned above. It does not answer a significant question – how is the follow-up treatment different from what an OB-gynecology specialist might provide? I take judicial notice that the Gunderson HMO has 16 OB-gynecology specialists in western Wisconsin, with 12 located in La Crosse or Onalaska. *See*, https://www.gundersenhealthplan.org/GHPInd/provider_dir_list_pdf2.xsql?plan_name=BADGERCARE&speciality

[=OB/GYN&first_name=&last_name=&facility_name=&city=&state=WI&zip=&county=%25&accept_new=&lang=%25&gender=%25&hosp_aff=%25](#). I am not convinced that the petitioner's condition cannot be treated within the HMO by one of these specialists.

Turning back to the Department's assertion that the petitioner cannot now switch to a primary care doctor outside of the HMO, I note in passing that the BCP HMO Contract does allow the patient to switch primary physicians *within* the HMO up to twice yearly. *HMO Contract*, at p. 81, online at <https://www.forwardhealth.wi.gov/WIPortal/Tab/42/icscontent/Managed%20Care%20Organization/Providers/providerContracts.htm.spage> (viewed in July 2015). The relevant federal rule does allow the state to restrict movement between HMOs for one year, and Wisconsin has chosen to do so for BCP recipients. *See, HMO Contract*, p. 188. (The petitioner will be eligible to change HMOs on April 1, 2016.) Once in an HMO, the HMO must offer the patient a choice of a primary care professional "affiliated with the HMO." *Id.*, p. 82, item #5. The HMO has done so here, and an out-of-network referral for a different primary physician is not required.

CONCLUSIONS OF LAW

1. The petitioner has not established that she cannot receive adequate treatment for menorrhagia from an OB/GYN specialist within her assigned BCP HMO.

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 7th day of July, 2015

\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 July 7, 2015.

Division of Health Care Access and Accountability