



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

In the Matter of

[Redacted]
[Redacted]
Redact

DECISION

MPA/165876

PRELIMINARY RECITALS

Pursuant to a petition filed May 5, 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 17, 2015, by telephone.

The issue for determination is whether the Division correctly denied a prior authorization request for gastric bypass surgery.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
[Redacted]
Redact

Respondent:

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

By written submission of [Redacted], MD
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 is a resident of Clark County. She is certified for MA or BadgerCare Plus.

2. A prior authorization request for a type of gastric bypass surgery (lap sleeve gastrectomy) was submitted on the petitioner's behalf in April 2015. The cost was \$8,059.00. On April 14, 2015, the Division issued written notice of the denial of the request. That denial prompted the instant hearing request.
3. The Division's basis for denial was that the petitioner did not have a co-morbid medical condition that was refractory to treatment.
4. The petitioner, age 56, has a Body Mass Index of 43.2 (five feet, six inches tall, 258 pounds). She has diagnoses of obesity, arthritis (lower back and lower extremities), esophageal reflux, hyperlipidemia, prediabetes, fibromyalgia, and tobacco abuse. Historically, she was diagnosed with sleep apnea and given a CPAP machine to ameliorate the apnea, but was not successful in using it regularly. An overnight sleep study done in September 2014 showed no significant obstructive sleep apnea, and no oxygen desaturation.
5. The petitioner has undergone a supervised diet program for six months (May – October, 2014), and lost one pound. She underwent the required bariatric team evaluation that included a psychological evaluation. The May 2014 psychological evaluation resulted in an opinion that the petitioner is "an adequate candidate for surgery from a psychological perspective."

DISCUSSION

The petitioner requests prior authorization for gastric bypass surgery to control her chronic obesity. Medical assistance covers this procedure through the prior authorization process only if there is a medical emergency. See Wis. Stat. § 49.46(2).

I. HISTORY OF APPROVAL GUIDELINES PRIOR TO DECEMBER, 2005.

Before 2001, authorization guidelines for the bypass procedure made approval nearly impossible, because the Division argued that the "medical emergency" requirement meant that the person's weight had to pose an immediate threat to his or her life. It further contrarily required that if this threat did occur, no prior authorization was necessary. This created a procedure that required prior authorization, but could paradoxically only be authorized and paid without prior authorization.

In 2001, the *Prior Authorization Guidelines Manual*, §117.014.02, changed the approval criteria to the following more attainable requirements: (1) The patient must have acceptable operative risks and be able to participate in treatment and long-term follow-up; *and* (2) have either a Body Mass Index (BMI) of at least 40, or BMI from 35-39 plus a high-risk co-morbid medical condition clinically judged to be life-threatening, such as documented sleep apnea, Pickwickian syndrome, obesity-related cardiomyopathy, or severe diabetes mellitus.

Revised guidelines issued in July, 2005, and March, 2009, attempted to address the inconsistency between the 2001 criteria and other code requirements that more cost-effective means be tried first. *E.g.*, the patient had to participate in a medically-supervised diet plan. The revised guidelines contained approval criteria related to BMI, co-morbid medical conditions that were unresponsive to medical management, documentation of previous supervised weight loss efforts, evaluation by a bariatric team, and attaining age 18.

II. THE PETITIONER DOES NOT SATISFY CURRENT REQUIREMENTS DUE TO LACK OF A COMORBID CONDITION.

The *Prior Authorization Guidelines Manual* was amended on December 7, 2005, and again in August, 2011. The change was to provision A1, related to BMI. That provision now reads:

The member has a body mass index greater than 35 with at least one documented high-risk, life-limiting comorbid medical conditions capable of producing a significant decrease in health status that are demonstrated to be unresponsive to appropriate treatment. There is evidence that significant weight loss can substantially improve the following comorbid conditions:

- Sleep apnea.
- Poorly controlled Diabetes Mellitus while compliant with appropriate medication regimen.
- Poorly controlled hypertension while compliant with appropriate medication regimen.
- Obesity-related cardiomyopathy.

See, *ForwardHealth Update*, No. 2011-44 (August, 2011)

The reason that the Division denied the petitioner's request was that the current authorization guidelines require the documented presence of a life-threatening co-morbid condition. None of her diagnoses other than morbid obesity are life-threatening conditions. This is a sufficient basis for denial of the surgery request. The Division properly applied the current guidelines here, and denied this authorization request. The petitioner may submit a new authorization request if her condition deteriorates in the future.

I note that the petitioner filed an earlier appeal of a previous bariatric surgery denial by the Division. The decision in that case, #162574, by Judge Maloney of this office, did not reach the merits of the denial. Rather, the appeal was dismissed for untimely filing. Thus, there were no substantive findings in that decision to rely upon for claim/issue preclusion in this Decision.

CONCLUSIONS OF LAW

Petitioner is not currently eligible for MA authorization and payment for the requested surgery.

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 24th day of June, 2015

Nancy 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 24, 2015.

Division of Health Care Access and Accountability