



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact
Redact
Redact

DECISION

MPA/165992

PRELIMINARY RECITALS

Pursuant to a petition filed May 07, 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 telephone hearing was held on May 28, 2015, at Milwaukee, Wisconsin. At the request of the petitioner, the record was held open for 15 days for the submission of additional information.

The issue for determination is whether the Division of Health Care Access and Accountability correctly denied the petitioner’s prior authorization request for MA coverage of a Roux-En-Y Laparoscopic Gastric Bypass due to the lack of a life-limiting, high risk, co-morbid condition.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact
Redact
Redact

Respondent:

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

Written Appearance By: Redact, M.D., Chief Medical Officer
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redact) is a 46 year-old resident of Milwaukee County. He is 5’10” tall, and weighs 393 lbs. He has chronic back pain due to a history of back injury, dyslipidemia, severe arthritis, depression, GERD, high blood pressure, sleep apnea, gout, degenerative joint disease, esophageal erosions, frequent urination, heartburn, high cholesterol, a leg ulcer, swollen

ankles, difficulty walking (he uses an assistive device), and peripheral venous insufficiency. He has no history of stroke or coronary artery disease.

2. On March 17, 2015, the petitioner's surgical provider, **Redact**, filed a prior authorization request with the Division of Health Care Access and Accountability, seeking coverage of a Roux-En-Y Laparoscopic Gastric Bypass.
3. At the time of the PA Request, he was taking allopurinol, aspirin, Vitamin D3, dulcolax, Vitamin D2, gabapentin, hydrochlorothiazide, lansoprazole, naproxen, omeprazole, prazosin, Metamucil, sertraline, tamsulosin, tizanidine, and trazodone. See, Exhibit #2, attached Progress Note of March 17, 2015.
4. On April 1, 2015, the Wisconsin Department of Health Services, by the Division of Health Care Access and Accountability, issued a decision letter to the petitioner denying coverage for the gastric bypass surgery, as not medically necessary under MA rules and prior authorization criteria.
5. On May 7, 2015, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the denial of the gastric bypass procedure for coverage by MA.
6. The petitioner has been provided with a CPAP machine to treat his apnea condition for night-time use. Recent past compliance problems are self-reported by the petitioner, as he did not like the mask he had to use with the machine. He believes he is using it about 5-6 hours every night, but is not comfortable. He is going in for a follow-up appointment in June, 2015, to attempt to get a better and more comfortable mask.
7. Clinical records indicate that the petitioner's high blood pressure has been well-controlled with a single medication. The petitioner denies this and has recently been to his physician for what he reported was new medication for hypertension a month prior to the hearing. He requested that the record be held open for 15 days for submission of new medical documents from his treating physician.
8. The medical records submitted by the treating physician establish that the petitioner takes 81 mg. of aspirin, 800 mg. of gabapentin, and triamterene for treatment of hypertension, and have been so using since at least April 15, 2015. See, Exhibit #4, attached Patient Chart Report dated 6/1/15. The triamterene appears to be the new drug the petitioner referenced, as both gabapentin and aspirin have been prescribed for at least the most recent nine months. See, Exhibit #2, attached medical records from the **Redact** - Bariatric Program.
9. Dr. **Redact** reports in his letter of June 1, 2015, that **Redact** "...continues to have symptoms of obstructive sleep apnea despite compliance with his CPAP machine..."; and that he is significantly impaired by severe arthritis in his knees. He noted that **Redact** has a Body Mass Index of 54, and that he could benefit from bilateral knee replacement but his orthopedic surgeon recommends that he achieve a BMI of 40 first. Dr. **Redact** opined that despite concerted efforts to lose weight through lifestyle changes, the petitioner has not been successful. Dr. **Redact** did not comment in anyway upon uncontrolled or poorly controlled hypertension in the petitioner. See, Exhibit #4, p. 1.
10. The **Redact** - Bariatric Program performed health status evaluations of the petitioner every month in October, November, and December, 2014, and January, February, and March, 2015. His blood pressure was reported, respectively at each visit, as follows: October 21 – 138/78; November 25 – 151/76; December 23 – 132/66; January 20 – 126/81; February 17 – 136/74; and March 17 – 122/69. See, Exhibit #2, attached medical records from **Redact** – Bariatric Program.

DISCUSSION

The criteria for approval of a gastric bypass, as of September 1, 2011, are as follows:

The approval criteria for PA requests for covered bariatric surgery procedures include ... the following:

□ 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.

ForwardHealth Update, No. 2011-44, effective September 1, 2011. There also must be documented prior attempts to lose weight, three months participation in a weight loss program, and medical and psychological evaluations to determine if the person is an appropriate candidate for such surgery.

The use of the Department's periodic Updates to set MA coverage guidelines is approved by law. See, Wis. Admin. Code, § DHS 108.02(4). The criteria at issue here were drafted because of the mandate that gastric bypass is limited to medical emergencies. Wis. Admin. Code, § DHS 107.06(4)(h).

The problem with petitioner's situation is that the Wisconsin statute allows for bariatric surgery ONLY in cases of medical emergencies. Thus the criteria are extremely difficult to meet, but the difficulty is not due to Department policy but due to state law. The petitioner's assertion of poorly controlled is not borne out by regular monthly physicals by the Bariatric Program demonstrating essentially stable blood pressure readings over the 6 months prior to the instant PA Request for surgery. Likewise, despite the written statement of Dr. Redact that the petitioner has been compliant with his CPAP regimen and his apnea has improved, I found the petitioner's testimony to be far more ambiguous on that point. He admitted that he did not like the CPAP mask, had difficulty keeping the CPAP in place at night, frequently using it only 5-6 hours per night, and that the mask was uncomfortable and he was going in to get a new mask that might fit better. This candid assessment tells me that it is not at all clear that the CPAP would not address his apnea condition and give him better restfulness and health if he were fully compliant and using it all night, every night for a full night's sleep. In addition, further weight loss may improve his apnea. His Bariatric Program report on file indicates that his BMI has slowly reduced from a high of 58.5 in November, 2014, to the present BMI of 54. See, Exhibit #2, attached Request for Prior Approval for Bariatric Surgery, dated March 17, 2015.

Thus, although petitioner would appear to be an ideal candidate for the gastric bypass surgery, his condition is not of an emergency nature and not coverable by MA at this time. I thus must conclude that the denial was correct.

CONCLUSIONS OF LAW

The DHCAA correctly denied the petitioner's prior authorization request for Roux-En-Y gastric bypass surgery because there was no evidence of a present medical emergency in the request.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby 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 9th day of June, 2015

\sKenneth D. Duren, Assistant Administrator
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 9, 2015.

Division of Health Care Access and Accountability