



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/166029

PRELIMINARY RECITALS

Pursuant to a petition filed May 15, 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 June 04, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly denied the Petitioner's request for an enteral nutrition supplement/replacement food product.

There appeared at that time and place 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: 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:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. Petitioner is 86 years old and has primary diagnoses of advanced Alzheimer's disease. She lives with a family member.

3. Petitioner cannot feed herself. She is spoon fed. A physician's progress note from January 6, 2015 reports that the Petitioner has poor appetite and has not been eating but that she loves to drink Ensure. Petitioner's daughter requested a prescription for Ensure.
4. The Petitioner does eat a limited number of altered consistency table foods and beverages.
5. On April 2, 2015, the Petitioner's provider, [REDACTED], submitted a PA request on behalf of the Petitioner for Ensure, 1000 calories/day. The PA request indicates that the Ensure will supplement the Petitioner's diet because she can consumer altered or regular consistency foods and beverages.
6. On April 6, 2015, the agency denied the Petitioner's request.
7. On May 15, 2015, an appeal was filed on behalf of the Petitioner with the Division of Hearings and Appeals.

DISCUSSION

Medically necessary enteral nutrition supplements/replacement food products such as Ensure require prior authorization to be covered by the MA program. Wis. Admin. Code § DHS 107.10(2).

In determining whether to approve a requested product or service, the department must consider the following:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service; . . .
6. The extent to which less expensive alternative services are available; . . .
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including Medicare or private insurance guidelines; . . .

Wis. Admin. Code § DHS 107.02(3)(e).

Enteral nutrition products that do not meet the criteria established by the agency are not covered by MA.

The review criteria established by the agency for enteral nutrition products are contained in ForwardHealth Update 2012-57. That update states that enteral nutrition products are not covered for the following:

- Boosting protein intake, weight reduction, body building, or performance enhancement.
- Convenience or preference of the provider or member or when an alternative nutrition source is available . . .

The update further states that the oral use of enteral nutrition products is not covered for the following:

- . . .
- Swallowing or feeding disorders that are behavioral, neurological, or psychological in nature (e.g. anorexia nervosa, bulimia, dementia, cognitive disorders, oral aversion and food preferences).
- Reduced appetite or anorexia
- Non-compliance with a specialized diet (e.g. allergies, gluten free, lactose free, diabetes, renal)
- . . .

In addition, the update notes that enteral nutrition products that may be purchased in a grocery store, pharmacy, other retail outlet or with FoodShare or WIC vouchers are not covered except when clinical documentation regarding the medical condition, clinical condition and supporting documentation meet the guidelines.

General purpose enteral nutrition products may be covered if the member has been diagnosed with one of the following medical conditions:

- A severe swallowing disorder . . .;
- Pathology of the GI tract that prevents digestion, absorption or utilizations of nutrients that cannot otherwise be medically managed;
- Transition from tube feeding to an oral diet.

In addition, the following clinical criteria must be met for general purpose enteral nutrition products to be covered:

- The member's medical condition is chronic;
- Adequate nutrition is not possible with dietary adjustment;
- A diet of regular or altered consistency table foods and beverages in not nutritionally sufficient and nutritional requirements can be met only using enteral nutrition products;
- A physician has prescribed the product.

A PA request for enteral nutrition products must include documentation of dietary or feeding recommendations, total daily caloric requirements, and a description of why a diet of regular or altered consistency table foods and beverages is not nutritionally sufficient and why nutritional requirements can be met only using enteral nutrition products.

At the hearing in this case, the Petitioner's daughter testified that the Petitioner eats very little and that she likes only certain foods. The foods that she will eat include chicken, cabbage, sweet potatoes, mashed potatoes and crackers. Everything has to be mashed or pureed. She will not drink milk and does not like yogurt or ice cream. She does drink water.

Based on the evidence submitted, I conclude that the agency properly determined that the PA request does not meet the criteria for coverage of the Ensure product. The primary reason for the Petitioner's request is that she has a reduced appetite due to a behavioral disorder (Alzheimer's). She is not diagnosed with any of the required medical conditions. In addition, there is not sufficient evidence to demonstrate why a diet of altered consistency table foods and beverages is not sufficient to be her needs. She does eat a number of altered consistency table foods.

Based on the criteria that I must apply and the evidence presented, I conclude the agency properly denied the PA request finding it does not meet the criteria for coverage.

CONCLUSIONS OF LAW

The agency properly denied the PA request.

THEREFORE, it is

ORDERED

That the Petitioner's appeal 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 July, 2015

\sDebra Bursinger
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 28, 2015.

Division of Health Care Access and Accountability