



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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/166444

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 06, 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 24, 2015, at Appleton, Wisconsin.

The issue for determination is whether the Department correctly denied the petitioner's prior authorization request for lap sleeve gastrectomy surgery.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By Letter: 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:**

Corinne Balter  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner is a resident of Outagamie County.

2. On May 20, 2015 the petitioner's provider, [REDACTED] submitted a prior authorization request for lap sleeve gastrectomy surgery.
3. On May 28, 2015 the Department notified the petitioner in writing that they denied her prior authorization for gastrectomy surgery.
4. On June 6, 2015 the Division of Hearings and Appeals received the petitioner's request for fair hearing.
5. At the time of the prior authorization request the petitioner was 61 years old, five feet seven inches tall, and 348 pounds. Her body mass index (BMI) was 60. She suffered from hypertension, diabetes, gastroesophageal reflux disease, stress urinary incontinence, arthritic symptoms of the weight bearing joints and asthma.
6. The petitioner's hypertension is controlled with appropriate medication and the petitioner's diabetes is stable.

### DISCUSSION

Wis. Stat., §49.46(2)(f) provides as follows concerning MA benefits: "Benefits under this subsection may not include payment for gastric bypass surgery or gastric stapling surgery unless it is performed because of a medical emergency."

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 petitioner has not submitted sufficient evidence showing that she has one documented high-risk, life-limiting comorbid medical conditions capable of producing a significant decrease in health status that is demonstrated to be unresponsive to appropriate treatment. Although it is undisputed that the petitioner suffers from hypertension, her hypertension is controlled through oral medication. [REDACTED] highlights that on February 25, 2015 the petitioner's blood pressure was 118/60. Similarly on February 16, 2015 the petitioner's blood pressure measured at 122/62. In addition, on June 3, 2015 the petitioner's blood pressure was 98/70. Less recently in September 2014 the petitioner's blood pressure was 120/80.

In my review of the petitioner's medical records, I did not find one instance of the petitioner's blood pressure being high.

It is undisputed that the petitioner has diabetes. However, the petitioner admitted that her diabetes is stable and controlled. ██████████ reviewed the petitioner's medical records. Her diabetes appears to be so well controlled that it was most recently mentioned in 2014. At that time her physician mentioned that her diabetes was stable. This is consistent with the petitioner's testimony.

The medical records show that the petitioner has lost up to 60 pounds through diet and exercise. I wish the petitioner the best of luck and success in continuing her current diet and exercise program.

### **CONCLUSIONS OF LAW**

The Department correctly denied the petitioner's prior authorization for lap sleeve gastrectomy 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 Milwaukee,  
Wisconsin, this 30th day of June, 2015

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\sCorinne Balter  
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](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on June 30, 2015.

Division of Health Care Access and Accountability