



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

In the Matter of

██████████
██████████
██████████
██████████

DECISION

HMO/166964

PRELIMINARY RECITALS

Pursuant to a petition filed June 25, 2015, under Wis. Stat. § 49.45(5)(a), and Wis. Admin. Code § HA 3.03, to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on July 16, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether United Health Care (the HMO) correctly denied the Petitioner’s request for orthotics.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████
██████████
██████████
██████████

Respondent:

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

By: Dr. Donna Davidoff, Chief Medical Officer
United Health Care Community Plan – Wisconsin
10701 W. Research Drive
Wauwatosa, WI 53226

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. On or about June 5, 2015, the HMO received a request for authorization of foot orthotics from ██████████
██████████, Petitioner’s primary care physician. (Exhibit 2; testimony of ██████████)

3. On that same date the HMO sent [REDACTED], a request for additional clinical information. (Exhibit 2)
4. The HMO did not receive the requested information. (Testimony of [REDACTED])
5. On June 16, 2015, the HMO sent the Petitioner, in care of his parents, a notice advising them that the requested service was denied. (Exhibit 3)
6. Petitioner's mother filed a request for fair hearing that was received by the Division of Hearings and Appeals on June 25, 2015. (Exhibit 1)

DISCUSSION

Under the discretion allowed by *Wis. Stat., §49.45(9)*, the Department of Health Services (DHS) requires MA (Medical Assistance) recipients to participate in HMOs. *Wis. Admin. Code, §DHS 104.05(2)(a)*. MA recipients enrolled in HMOs must receive medical services from the HMOs' providers, except for referrals or emergencies. *Wis. Admin. Code, §DHS 104.05(3)*.

The criteria for approval by a managed care program contracted with the DHS are the same as the general MA criteria. See *Wis. Admin. Code, §DHS 104.05(3)*, which states that HMO enrollees shall obtain services "paid for by MA" from the HMO's providers. The department must contract with the HMO concerning the specifics of the plan and coverage. *Wis. Admin. Code, § DHS 104.05(1)*.

If the enrollee disagrees with any aspect of service delivery provided or arranged by the HMO, the recipient may file a grievance with DHS or appeal to the Division of Hearings and Appeals.

Just as with regular MA, when the department denies a grievance from an HMO recipient, the recipient can appeal the DHS's denial within 45 days. *Wis. Stat., §49.45(5)*, *Wis. Admin. Code, § DHS 104.01(5)(a)3*.

When determining whether to approve any service, the HMO, as with the Department of Health Services, must consider the generic prior authorization review criteria listed at *Wis. Admin. Code, §DHS §107.02(3)(e)*:

(e) *Departmental review criteria*. In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.

"Medically necessary" means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;
 7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code, §DHS 101.03(96m)

For any prior authorization request to be approved, the Medicaid recipient and his physician must show that the requested service satisfies the generic prior authorization criteria listed above. *Gonwa v. Department of Health and Family Services*, 2003 WI App 152, 265 Wis.2d 913, 668 N.W.2d 122 (Ct.App.2003)

Wis. Admin. Code § DHS 107.24(4)(f) states that orthopedic shoes and foot orthoses are considered medically necessary only for “post-surgery conditions, gross deformities, or when attached to a brace or bar...”

The record contains no medical documentation from the provider. As such, there is no way to know whether the Petitioner’s condition meets the approval criteria. This is problematic, since the parties were unclear as to why the orthoses were being requested. [REDACTED] was under the impression, based upon double hearsay statements, that the child needed the orthoses to help ease growing pains, while playing sports. Petitioner’s mother testified that she was told that the child suffered a fracture that was not healing properly and that he needed the orthotic / orthoses to aid in that process.

Under such circumstances, it is found that the Petitioner and his physician have not shown the medical necessity for the requested orthoses / orthotics.

It should be noted that Petitioner’s physician may, at any time, submit a new request for the orthotics / orthoses, along with the necessary medical documentation. If that new request is denied, Petitioner may file a NEW request for fair hearing.

Petitioner should note that his physicians will not receive a copy of this decision, so his parents may wish share this decision with them.

CONCLUSIONS OF LAW

The HMO correctly denied the Petitioner’s request for orthoses / orthotics.

THEREFORE, it is ORDERED

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 22nd day of July, 2015.

\sMayumi M. Ishii
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 22, 2015.

Division of Health Care Access and Accountability