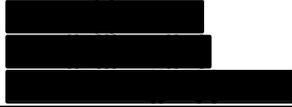




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FCP/167416

PRELIMINARY RECITALS

Pursuant to a petition filed July 17, 2015, under Wis. Admin. Code § DHS 10.55, to review a decision by the iCare in regard to Medical Assistance, a hearing was held on September 02, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether iCare correctly denied the Petitioner’s request for durapore medical adhesive tape.

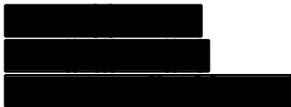
NOTE: ALJ Ishii was unable to reach iCare staff at the appointed time for the hearing. The Petitioner indicated that he did not want to reschedule hearing, but that he would have not objections to iCare submitting a post hearing response, if they later contacted the Division of Hearings and Appeals and asked to do so.

Attorney Bartlett contacted ALJ Ishii after the hearing and was advised that she could obtain a copy of the proceedings and submit a written response if iCare so desired. No written response was received.

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: Elizabeth Bartlett, General Counsel
iCare
1555 N. Rivercenter Drive
Suite 206
Milwaukee, WI 53212

ADMINISTRATIVE LAW JUDGE:
 Mayumi M. Ishii
 Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The Petitioner is 50 years old and has been diagnosed with a hearing loss, schizophrenia, delusional disorder, personality disorder, history of hip fracture, chronic pain/fatigue, high blood pressure and high cholesterol. (Exhibit R1, pg. 42)
3. The Petitioner resides in an [REDACTED]. (Id. at pg. 38; testimony of [REDACTED] – Petitioner’s personal care worker)
4. The Petitioner has been prescribed Lidoderm patches for pain management and uses medical tape to help secure the patch onto his body. (Exhibit R1; Testimony of Petitioner; Testimony of [REDACTED])
5. The Petitioner has paid \$12.50 for ten rolls of the 3M Durapore tape. (Testimony of Petitioner)
6. The ten rolls last about six weeks. (Testimony of the Petitioner and [REDACTED])
7. On or about June 16, 2015, the Petitioner asked that iCare, his family care MCO, cover the cost of 3M Durapore tape, because he did not like the medical tape he had been using previously. (Exhibit R1, pgs. 58 and 64)
8. On June 18, 2015, iCare utilized a Resource Allocation Decision tool and determined that the 3M Durapore tape was not necessary, because the Lidoderm patches are self-adhesive. iCare further noted that Petitioner had different medical tape available to him, specifically transpore tape, if he wanted to use it. (Exhibit R1, Grievance Documentation and pgs. 56-57)
9. On that same date, iCare sent the Petitioner a notice advising him that his request for 3M Durapore Tape had been denied. (Exhibit R1, pgs. 21 and 64)
10. On June 22, 2015, the Petitioner filed an appeal with iCare’s grievance and appeal committee and on July 14, 2015, iCare sent the Respondent a notice that the committee upheld the denial. (Exhibits R1 and R2)
11. The Petitioner filed an appeal that was received by the Division of Hearings and Appeals on July 17, 2015. (Exhibit P1)

DISCUSSION

The Family Care Program is a subprogram of Wisconsin’s Medical Assistance (MA) program and is intended to allow families to arrange for long-term community-based health care and support services for older or impaired family members without resort to institutionalization, *Wis. Stats.* §46.286; *Wis. Admin. Code* §DHS 10.11. The Family Care Long Term Care program (FCP) is a long-term care benefit for the elderly, people with physical disabilities and those with developmental disabilities. *Medicaid Eligibility Handbook (MEH)*, §29.1; 38.2.

An individual who meets the functional and financial requirements for Family Care participates in Family Care by enrolling with a Care Management Organization (CMO), which, in turn, works with the participant and his/her family to develop an individualized plan of care. *See Wis. Stats.*

§46.286(1) and Wis. Admin. Code §DHS 10.41. The CMO, in this case iCare, implements the plan by contracting with one or more service providers.

Wis. Admin. Code DHS 10.41(2) states that:

Services provided under the family care benefit shall be determined through individual assessment of enrollee needs and values and detailed in an individual service plan unique to each enrollee. As appropriate to its target population and as specified in the department's contract, each CMO shall have available at least the services and support items covered under the home and community-based waivers under 42 USC 1396n (c) and ss. 46.275, 46.277 and 46.278, Stats., the long-term support community options program under s. 46.27, Stats., and specified services and support items under the state's plan for medical assistance. In addition, a CMO may provide other services that substitute for or augment the specified services if these services are cost-effective and meet the needs of enrollees as identified through the individual assessment and service plan.

Emphasis added

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. State v. Hanson, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). In a case involving a request for a new service, the applicant has the initial burden to establish he or she met the application requirements. Estate of Gonwa ex rel Gonwa v. Wisconsin Dept. of Health and Family Services, 265 Wis.2d 913, 668 N.W.2d 122, 2003 WI App. 152

Here, the Petitioner is requesting a new service; coverage of 3M Durapore tape. Consequently, the burden of proof falls upon the Petitioner to show that his request for the durapore tape meets approval criteria.

It is the position of iCare, that coverage cannot be approved, because use of the 3M Durapore tape is not a cost effective means of securing the Lidoderm patches and because the tape is unnecessary. It is the position of iCare that the adhesive on the Lidoderm patches is sufficient to keep the patch on the Petitioner's skin and if the Petitioner wants extra tape, that the transpore tape is already available to him.

At the hearing, the Petitioner testified that the Lidoderm patch peels off over time, just from him moving around.

iCare's assertion that the adhesive on the patch is sufficient is puzzling, given that the Petitioner appears to have been given approval to use the transpore tape in the past, but the record does not support a finding that the adhesive on the Lidoderm patch is ineffective for the Petitioner.

The case notes indicate that iCare staff suggested Petitioner use baby oil because, the Petitioner stated that he was having difficulty removing something, either the patch or the medical tape. However, the case notes are inconsistent, so it is not clear if one or both items were problematic. (Exhibit R1, pgs. 97, 98, 100 and 104) None the less, the case notes call into question the credibility of Petitioner's testimony, because if he was having difficulty removing the patch that would suggest that the adhesive on the patch is effective.

While the case notes are not clear, the fact remains that the burden of proof falls upon the Petitioner to prove that the adhesive on the Lidoderm patch is not sufficient. There is no third-party testimony from anyone who has observed the Petitioner's use of the Lidoderm patch on its own or has otherwise seen the Lidoderm patch peeling off prematurely. I note that the Petitioner's personal care worker did not testify to seeing any problems with the patch's adhesive, only the transpore tape. In the absence of corroborating evidence, it is found that the adhesive on the Lidoderm patch is sufficient.

The Petitioner has not met his burden to prove his request for 3M Durapore tape meets approval criteria.

It should be noted [REDACTED] testified that he has noticed that the tape Petitioner previously used left more sticky residue on the Petitioner's skin and would leave more residue on the toilet seat. [REDACTED] testified that the previous tape also caused some irritation, leaving the Petitioner's skin pink. [REDACTED] testified that there is not as much residue left by the Durapore tape and that it does not seem to irritate the Petitioner's skin.

Thus, based upon [REDACTED]'s testimony, it is clear that the other tape the Petitioner used, the transpore tape, was causing the Petitioner irritation and as such, is not an effective means of securing the Lidoderm patch on the Petitioner's skin.

The Petitioner should note that if he and his personal care worker can document problems with the Lidoderm patch's adhesive, the Petitioner is free to put in another request for the 3M Durapore tape. If iCare denies the request again, the Petitioner can file a NEW appeal.

CONCLUSIONS OF LAW

iCare correctly denied the Petitioner's request for 3M Durapore medical tape.

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 29th day of
September, 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 September 29, 2015.

iCare
Office of Family Care Expansion
Health Care Access and Accountability