



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/167682

PRELIMINARY RECITALS

Pursuant to a petition filed July 30, 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 telephonic hearing was held on September 01, 2015, at Montello, Wisconsin.

The issue for determination is whether the Department correctly denied the petitioner's prior authorization (PA) request for an MRI (magnetic resonance imaging) of her lower extremity without contrast.

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: [REDACTED], RN nurse consultant
Office of the Inspector General (OIG)
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 45 year old resident of Marquette County who is certified for MA.

2. On July 13, 2015, the petitioner's provider, Dr. [REDACTED], Family Practice, [REDACTED], WI [REDACTED], requested approval from OIG for an MRI of the petitioner's lower extremity without contrast.
3. That July 13, 2015 PA request was submitted **more than 2 months** after the provider performed the MRI of the petitioner's lower extremity on **April 27, 2015** prior to any written or verbal response from OIG regarding the requested MRI.
4. On July 14, 2015, the Division of Health Care Access and Accountability (Division) sent a notice to the petitioner denying her request for an MRI of her lower extremity because the provider's submitted information provided on the PA did not support the medical necessity of the MRI, and the MA provider completed the April 27, 2015 MRI procedure prior to any written or verbal denial or approval determination by DHCAA.
5. OIG nurse consultant, [REDACTED], sent a detailed August 18, 2015 summary to the Division of Hearings and Appeals (DHA) (with a copy to the petitioner) providing the following reasons for the denial of reimbursement for the April 27, 2015 MRI of her lower extremity: a) the MRI was performed on April 27, 2015, but the provider failed to timely submit the PA request and receive prior approval or denial of that request before proceeding with the MRI; b) the provider did not establish a documented emergency, and did not obtain prior verbal approval for the April 27, 2015 MRI procedure; c) the provider failed to document the duration of petitioner's lower extremity joint pain or information to rule out a particular problem of that joint; d) the Med Solution nurse reviewer deemed the PA to have insufficient clinical information to support the medical necessity of the petitioner's MRI; e) the provider failed in her PA to document any recent clinical information that was relevant to the alleged need for the lower extremity MRI; and f) failure by the MA provider to obtain proper prior authorization shall not result in liability of the member for coverage without prior notification of a denial decision to the petitioner.

DISCUSSION

Medical Assistance covers physician-prescribed diagnostic services if they are consistent with good medical practices. Wis. Adm. Code, §§ DHS 107.06(1) and 107.25. In an effort to ensure that CT, MRI, and PET scans are consistent with good medical practice, the Division of Health Care Access and Accountability requires prior authorization before paying for them. It announced this requirement to providers in October 2010 through *MA Update*, #2010-92.

OIG nurse consultant, nurse consultant, [REDACTED], sent a convincing August 18, 2015 summary to the Division of Hearings and Appeals (DHA) (with a copy to the petitioner) which established that OIG correctly denied reimbursement for the April 27, 2015 MRI of petitioner's lower extremity for the reasons set forth in Finding of Fact #5 above. Neither petitioner nor her provider provided any testimony or evidence to refute the Department's case for denial of petitioner's PA request.

Furthermore, both the Wisconsin Administrative Code and written policy are very clear, in several places, that, if a prior authorization (PA) is not **requested and obtained before a service requiring PA is provided**, reimbursement shall not be made. Wis. Admin. Code § DHS 107.02(3)(c); See also, Wis. Admin. Code §§ DHS 106.03(4)(intro.), 107.02(2)(h) & 107.03(9), *WMAP Provider Handbook* (WMAP Handbook) Part A Section VIII-C (page A8-001) & Part A Appendix 15 (page A11-041 #2); additionally see, Wis. Admin. Code §§ DHS 107.02(1)(a), 107.02(2)(intro.), 107.02(2)(a), 107.02(3)(e)9. & 107.02(3)(i)2.c.. It follows that OIG was correct not to approve the PA request for reimbursement by MA of petitioner's MRI procedure performed because the provider failed to request and obtain approval (or denial) of its April 27, 2015 MRI until submitting its PA request on July 13, 2015, more than 2 months **after** the MRI procedure was performed on petitioner's lower extremity.

Petitioner should note that the Wisconsin Administrative Code makes abundantly clear that the provider is **solely** responsible for the timeliness of PA requests. Wis. Admin. Code § DHS 106.02(9)(e)1. When a service must be authorized by DHCF in order to be covered, **the recipient may not be held liable by the certified provider unless the prior authorization was denied by DHCAA and the recipient was informed of the recipient's personal liability before provision of the service.** In this case, the petitioner testified convincingly that she was never informed of any possible personal liability for the MRI before the April 27, 2015 MRI. In that case, the recipient may request a fair hearing. Negligence on the part of the certified provider in the prior authorization process shall not result in recipient liability. Wis. Admin. Code DHS § 104.01(12)(c).

“Providers are solely responsible for obtaining prior authorization, before the delivery of service. The provider may not bill the recipient because of his/her failure to seek prior authorization.

If a provider renders a service which requires prior authorization, without first obtaining authorization, the provider is responsible for the cost of the service. **NOTE:** Exceptions are the provision of services that require prior authorization, but were performed without prior authorization as an emergency service, and in cases of provider/recipient retroactive eligibility.” The provider did not establish any emergency service of the MRI was required.

WMAP Handbook Part A, Appendix 15 (page A11-041 #2)

CONCLUSIONS OF LAW

1. The Division correctly denied reimbursement for the provider’s PA request on behalf of petitioner for the April 27, 2015 MRI because those services were performed by the MA provider prior to the approval or denial of that PA request.
2. The Division of Health Care Access and Accountability correctly denied petitioner’s PA request for an MRI of her lower extremity, due to lack of established medical necessity.

THEREFORE, it is

ORDERED

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 26th day of October, 2015

\sGary M. Wolkstein
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 October 26, 2015.

Division of Health Care Access and Accountability