



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/168429

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 1, 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 (DHCAA or Division) in regard to Medical Assistance (MA), a hearing was held on September 30, 2015, by telephone.

The issue for determination is whether the Division correctly denied a prior authorization request for gastric bypass surgery.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

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Respondent:

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

By written submission of [REDACTED], M.D.

Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County. She is certified for MA or BadgerCare Plus (an MA variant).

2. A prior authorization request for a lap sleeve gastrectomy was submitted on the petitioner's behalf to the Division in July 2015. On July 30, 2015, the Division issued written notice of the denial of the request. The petitioner then timely filed a hearing request.
3. The basis for denial was that the petitioner did not have a co-morbid medical condition that was refractory to treatment.
4. The petitioner, age 46, has a Body Mass Index of 35.6. At five feet, eight inches tall, she currently weighs 230 pounds, and has been obese throughout adulthood. She has diagnoses of obesity, type II diabetes, hypertension, hyperlipidemia, and hypothyroidism.

Limited lab values were supplied to allow assessment of the severity of these conditions. From 2008 through 2013, the supplied glucose test results never exceeded 150. On January 10, 2014, glucose was at 109, A1c was at 8.0. The prescribed medication at that time was metformin, 2000 mg daily. Januvia, 100 mg daily, was added by October 2014. A medical note from February 25, 2015, declares: "blood sugars are now running 120s rather than 200 due to her dietary changes." A medical note from May 27, 2015 declares: "blood sugars are now running low 100s; today BS was 101." Nonetheless, an A1c test was ordered, yielding a high result of 8.4. An additional blood sugar control drug, Glipizide 20 mg, was then added for the petitioner in June 2015. The final laboratory finding for glucose was 218 on September 2, 2015. Finally, there is a surprising medical note on September 16, 2015: "blood sugars are variable; blood sugars running in low 300s."

5. The petitioner has undergone a supervised diet program for six months, which resulted in the loss of less than 10 pounds. She underwent the required bariatric team evaluation that included two psychological evaluations.

## DISCUSSION

The petitioner requests prior authorization for gastric bypass surgery to control her chronic obesity. Medical assistance covers this procedure through the prior authorization process only if there is a medical emergency. *See* Wis. Stat. § 49.46(2)(f).

### I. HISTORY OF APPROVAL GUIDELINES PRIOR TO DECEMBER, 2005.

Before 2001, authorization guidelines for the bypass procedure made approval nearly impossible, because the Division argued that the statutory "medical emergency" requirement meant that the person's weight had to pose an immediate threat to his or her life. It further contrarily required that if this threat did occur, no prior authorization was necessary. This created a procedure that required prior authorization, but could paradoxically only be authorized and paid without prior authorization.

In 2001, the *Prior Authorization Guidelines Manual*, §117.014.02, changed the approval criteria to the following more attainable requirements: (1) The patient must have acceptable operative risks and be able to participate in treatment and long-term follow-up; *and* (2) have either a Body Mass Index (BMI) of at least 40, or BMI from 35-39 plus a high-risk co-morbid medical condition clinically judged to be life-threatening, such as documented sleep apnea, Pickwickian syndrome, obesity-related cardiomyopathy, or severe diabetes mellitus.

Revised guidelines issued in July, 2005, and March, 2009, attempted to address the inconsistency between the 2001 criteria and other code requirements that more cost-effective means be tried first. *E.g.*, the patient had to participate in a medically-supervised diet plan. The revised guidelines contained approval criteria related to BMI, co-morbid medical conditions that were unresponsive to medical

management, documentation of previous supervised weight loss efforts, evaluation by a bariatric team, and attaining age 18.

## II. THE PETITIONER DOES NOT SATISFY CURRENT REQUIREMENTS DUE TO LACK OF A COMORBID CONDITION.

The *Prior Authorization Guidelines Manual* was amended on December 7, 2005, and again in August, 2011. The change was to provision A1, related to BMI. That provision now reads:

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.

See, *ForwardHealth Update*, No. 2011-44 (August, 2011)

The reason that the Division denied the petitioner's request was that the current authorization guidelines require the documented presence of a life-threatening co-morbid condition. With the possible exception of "poorly controlled diabetes," none of her diagnoses other than morbid obesity are life-threatening conditions.

The petitioner argues that her diabetes is so poorly controlled that it presents a life-threatening condition. The American Diabetes Association's goals for blood sugar control in people with diabetes are levels of 70 mg/dL to 130 mg/dL before meals, and less than 180 mg/dL after meals. See, <http://www.webmd.com/diabetes/how-sugar-affects-diabetes?page=2> . In January 2014, glucose was at 109, A1c was at 8.0. The prescribed medication at that time was metformin, 2000 mg daily. Januvia, 100 mg daily, was later added in 2014. A medical note from February 25, 2015, declares: "blood sugars are now running 120s rather than 200 due to her dietary changes." A medical note from May 27, 2015 declares: "blood sugars are now running low 100s; today BS was 101." Nonetheless, an A1c test was ordered, yielding a high result of 8.4. An additional blood sugar control drug, Glipizide 20 mg, was then added for the petitioner in June 2015. The maximum daily dose for Glipizide is 40 mg, so the petitioner is not at the maximum. The Division issued its denial letter for this surgery in late July. The final laboratory finding for glucose was 218 on September 2, 2015. Finally, there is a surprising and ultimately not credible medical note on September 16, 2015: "blood sugars are variable; blood sugars running in low 300s."

If I am to believe that the petitioner's blood sugar levels are so out of control as to be imminently life-threatening, I need to see more than one high confirmed lab test (the 218 in September 2015) since the addition of Glipizide to the medication regimen. Regarding the not-credible September 16 note reporting that blood sugars were suddenly in the 300s, I would think that the provider would be so concerned about this spike that a lab test or medication change would have been ordered; yet, that apparently did not occur.

The information in this hearing record provides a sufficient basis for denial of the surgery request. The burden of proof in any prior authorization cases rests with the petitioner. The Division properly applied

the current guidelines here, and denied this authorization request. The petitioner may submit a new authorization request if her condition deteriorates in the future.

### CONCLUSIONS OF LAW

Petitioner is not currently eligible for MA authorization and payment for gastric bypass 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 Madison,  
Wisconsin, this 30th day of November, 2015

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\sNancy J. Gagnon  
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 December 1, 2015.

Division of Health Care Access and Accountability