



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

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In the Matter of

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

DECISION

MPA/169799

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 07, 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 December 14, 2015, at Eau Claire, Wisconsin.

The issue for determination is whether the petitioner is entitled to medical assistance reimbursement for a root canal.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

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

Petitioner's Representative:

██████████ ██████████  
██  
██

Respondent:

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

By: Dr. ██████████ ██████████

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

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner is a resident of Eau Claire County.

2. On August 14, 2015, the petitioner with the [REDACTED] requested that the medical assistance program pay for a root canal on tooth #14.
3. The petitioner's dentist, Dr. [REDACTED] [REDACTED] who observed the petitioner's teeth and testified at the hearing, determined that over 50% of the crown of tooth #14 is visible.

### DISCUSSION

The petitioner appeals the denial of his request for a root canal on tooth #14, a molar. A root canal removes infected pulpal tissue from the tooth and replaces it with a filling to prevent the loss of the tooth. The department has published online guidelines that it uses to determine whether to approve a root canal. The Office of Inspector General's sole basis for denying the requested root canal was that it did not meet the following requirement found in the *Wisconsin Medicaid Online Handbook*, Topic # 2881: "Evidence visible on radiographs that at least 50% of the clinical crown is intact." The petitioner's own dentist contradicted this assertion at the hearing, testifying that he determined after viewing the petitioner's mouth that over 50% of the tooth was in fact visible.

Dr. [REDACTED] [REDACTED], who appeared for the Office of Inspector General, did not appear at the hearing but rather submitted a statement. The rules of evidence generally do not apply to administrative hearings. Wis. Stat. § 227.45. Nevertheless, in-person testimony is favored over hearsay. In *Gehin v. Wisconsin Group Insurance Board*, 2005 WI 16, our state supreme court overturned a finding based upon untestified to medical records that were contradicted by the sworn testimony of petitioner's medical provider. The court's rationale is that "the purpose of allowing the admission of hearsay evidence is to free administrative agencies from technical evidentiary rules, but at the same time this flexibility does not go so far as to justify administrative findings that are not based on evidence having rational probative force." *Id.* at ¶54.

Dr. [REDACTED]'s assertion did not lack rational probative force because he reviewed X-rays of the petitioner's teeth. But, unlike the petitioner's dentist, he did not actually see the petitioner's mouth and he was not available for questioning. Just as I have no authority to ignore medical assistance rules, I also have no authority to ignore a holding of our supreme court. Therefore, based upon the testimony of the petitioner's dentist, I find that the petitioner is entitled to the requested root canal.

***I note to the petitioner that his dentist will not receive a copy of this decision. In order to receive the approved root canal, he must provide a copy of this decision to his dentist, who then must submit a new prior authorization request.***

### CONCLUSIONS OF LAW

The petitioner is entitled to a root canal on tooth #14 because it is medically necessary.

**THEREFORE, it is**

**ORDERED**

That the petitioner's dentist is authorized to provide the root canal discussed in this decision. To receive reimbursement he must submit his claim, along with a copy of this decision and a **new prior authorization form** to Forward Health for payment.

### **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 23rd day of December, 2015

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\sMichael D. O'Brien  
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 23, 2015.

Division of Health Care Access and Accountability

██████████@drwi.org