



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/169668

PRELIMINARY RECITALS

Pursuant to a petition filed October 21, 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 February 3, 2016, by telephone. Hearings set for December 2 and 23, 2015, were rescheduled at the petitioner's request. The hearing record was held open for seven days for a submission from the petitioner, which was received.

The issue for determination is whether the Division correctly denied a prior authorization request for foot arch supports for the petitioner.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By written submission of [REDACTED], DPT
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 Dane County. She is certified for MA.
2. On September 25, 2015, a prior authorization request was submitted on the petitioner's behalf for foot arch supports. The Division issued written notice of denial on September 28, 2015.
3. The Division's basis for denial was that the petitioner's feet do not fit into any of the permissible categories for coverage of orthoses. MA insists that this is the petitioner's first MA authorization request for orthotics; the petitioner insists that MA has paid for her orthotics in the past.
4. The petitioner, age 2 ½, has diagnoses of flat feet, joint hypermobility, hypotonia, and significant pronation of the feet. Due to her poor muscle tone in the lower extremities, the petitioner shifts "out of a neutral alignment" unless the foot and ankle are supported by a custom orthotic. The child did not begin to walk until she was provided with the stability of an orthosis.
5. The petitioner is not suffering from a post-surgery condition. No evidence was offered that her shoe size differs from one foot to the other. She does not have differing leg lengths, or a rigid foot deformation. Her shoes are not attached to a brace or bar.

DISCUSSION

The Division denied the petitioner's request for foot orthotics. The state Medicaid code language states:

(2) COVERED SERVICES.

...

2. Orthopedic or corrective shoes. These are any shoes attached to a brace for prosthesis; mismatched shoes involving a difference of a full size or more; or shoes that are modified to take into account discrepancy in limb length or a rigid foot deformation. Arch supports are not considered a brace. Examples of orthopedic or corrective shoes are supinator and pronator shoes, surgical shoes for braces, and custom-molded shoes.

3. Orthoses. These are devices which limit or assist motion of any segment of the human body. They are designed to stabilize a weakened part or correct a structural problem. Examples are arm braces and leg braces

...

(4) OTHER LIMITATIONS.

...

Orthopedic or corrective shoes or foot orthoses shall be provided only for post-surgery conditions, gross deformities, or when attached to a brace or bar. These conditions shall be described in the prior authorization request.

[emphasis added]

Wisconsin Administrative Code § DHS 107.24(4)(f)

Medical assistance regulations specifically prohibit coverage of foot orthoses for flattened arches, incomplete dislocation of metatarsalgia, arthritis with no associated deformities, or hypoallergenic conditions. Wis. Adm. Code, § DHS 107.24(5)(a)1.

Orthotics may be advisable for a wide range of conditions, but state code only allows MA to pay for foot orthotics for three conditions: postsurgery conditions, attachment to a brace/bar, or presence of a gross foot deformity other than flat feet. The petitioner does not suffer from a postsurgery condition, and her orthotics are not attached to a brace or bar. The only remaining acceptable condition is a *gross* foot

deformity other than flat feet. In addition to flat feet, this child has substantial pronation (inward curve) of her feet. The critical question in this case is whether pronation of the feet when the child is standing and walking is a “gross deformity.” I conclude that pronation, as illustrated by the petitioner’s photographs, is not a gross deformity. I also shared the photographs with physical therapist [REDACTED] from the Division; she likewise concluded that the pronation is not a “gross deformity.”

The petitioner has not established that she suffers from any of the other foot problems identified in the code above. Therefore, denial of her authorization request under “regular” MA was correct.

As an aside, after reviewing the foot photographs, [REDACTED] suggested that it might be possible to have a special children’s subset of the MA program pay for the orthotics. This subset is referred to as Early & Periodic Screening, Diagnostic, Treatment services (EPSDT or “Health Check Other Services”), and can offer more expansive coverage than items allowed in state code for MA. However, having an item covered through Health Check Other Services is a slightly more involved process that will require the provider to submit a new prior authorization request for the orthotics to HealthCheck. As a help to the petitioner, [REDACTED] or a co-worker has telephoned the provider [REDACTED] and advised how the provider might proceed (if the petitioner wishes to do so).

CONCLUSIONS OF LAW

1. Pronation of the petitioner’s feet is not a “gross deformity” as that term is used in Wis. Admin. Code § DHS 107.24(4).
2. Denial of the requested orthoses was correct, as the petitioner’s condition does not meet the criteria at Wis. Admin. Code § DHS 107.24(2)-(4).

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 22nd day of March, 2016

Nancy 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 March 22, 2016.

Division of Health Care Access and Accountability