



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

DECISION

MPA/170745

PRELIMINARY RECITALS

Pursuant to a petition filed December 10, 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 February 15, 2016, at Chippewa Falls, Wisconsin. A hearing scheduled for January 15, 2016, was rescheduled at the petitioner's request.

The issue for determination is whether the petitioner is entitled to medical assistance reimbursement for Boost, an enteral product, to increase his weight.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
[Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

Petitioner's Representative:

Attorney [Redacted]
[Redacted]
[Redacted]

Respondent:

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

By: [Redacted]
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 Chippewa County.

2. The petitioner is diagnosed with attention-deficit disorder. This is treated with Strattera, which decreases his appetite.
3. The petitioner's height, weight, and body-mass index are all less than the 3rd percentile.
4. The petitioner's calorie consumes approximately 1100 calories per day. His doctor recommends he increase this to 1820 calories per day.
5. The petitioner can increase his calorie intake to the recommended level through readily available foods.
6. The petitioner requests a 355-day supply of Boost at a cost of \$1,634.32.

DISCUSSION

The medical assistance program requires prior authorization for nutritional supplements and replacement products such as Boost. *See* Wis. Admin. Code § DHS 107.10(2)(c). It does not cover “[e]nteral products that do not meet the criteria established by the department under sub. (2)(c) to verify medical need, when an alternative nutrition source is available, or that are solely for the convenience of the caregiver or the recipient.” Wis. Admin. Code § HFS 107.10(4)(t).

The petitioner is diagnosed with attention-deficit disorder. This is treated with Strattera, which decreases his appetite. As a result he only consumes 1100 calories a day rather than the 1820 his doctor recommends, and his height, weight, and body-mass index are all less than the 3rd percentile. He requests Boost, an enteral supplement to increase his weight. The Office of Inspector General contends that Boost does not meet the criteria found in Wis. Admin. Code § DHS 107.10.

The petitioner's attorney contends that the limitations on enteral products violates federal law because it is not a reasonable standard for determining the extent of medical assistance services as required by 42 U.S.C 1396a(17). She also contends that the request for Boost must be provided as a HealthCheck-Other service, which covers services that might not otherwise be covered by medical assistance if a screening indicates they are otherwise needed. *See* Wis. Admin. Code, § DHS 107.22(4).

I disagree. Specific regulations are usually favored over general ones, so those specifically applying to this type of product should apply. Furthermore, any service, including HelathCheck services, must be medically necessary and cost-effective. Wis. Admin. Code, § DHS 107.02(3)(e). Among the requirements for a service to be “medically necessary” is that it is “not solely for the convenience of the recipient, the recipient's family or a provider.” Wis. Admin. Code, § DHS 101.03(96m)(b)7. Boost does not meet either this regulation or the one specifically pertaining to enteral products.

Boost is not a super-drink. Each glass contains 10 grams of protein, but it also contains 20 grams of sugar. Its first two ingredients after water are corn syrup and sugar. It contains 25% to 100% of one's daily vitamin and mineral needs, amounts that can be exceeded with a cheap vitamin pill. <https://www.boost.com/products/original>. The petitioner apparently can digest regular milk, so he does not require the soy-based protein found in Boost. The internet is full of healthy alternatives that are both nutritious and dense with calories. For example, smoothies can be made with a combination of whole milk, added powder milk, Greek yogurt, fruit, eggs, grain such as oatmeal, and honey, syrup or some other sweetener. Based upon this, I find that alternative nutrition sources are available and that there is no need for Boost other than for convenience of the petitioner's caregivers. Therefore, the Office of Inspector General correctly denied the petitioner's request for Boost.

CONCLUSIONS OF LAW

The Office of Inspector General properly denied the request for Boost because alternative sources of nutrition are available and it is for the convenience of his caregivers.

THEREFORE, it is

ORDERED

The petitioner's appeal 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 28th day of March, 2016

\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 March 28, 2016.

Division of Health Care Access and Accountability

Attorney [REDACTED] [REDACTED]