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

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In the Matter of:

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/171333

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 8, 2016, 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 ["DCHAA"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone from Madison, Wisconsin on February 23, 2016.

The issue for determination is whether petitioner is eligible for payment by the MA program for Laparoscopic Gastric Bypass/Roux-En-Y surgery.

There appeared at that time via telephone 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] MD, Chief Medical Officer  
Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

Sean P. Maloney  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (41 years old) is a resident of Crawford County, Wisconsin.
2. Petitioner's provider (Gunderson Lutheran Medical Center, Inc. of LaCrosse, Wisconsin) requested Prior Authorization ["PA"] for MA coverage of Laparoscopic Gastric Bypass/Roux-En-Y surgery for petitioner by a *Prior Authorization Request Form (PA/RF)* dated November 19, 2015 (PA # [REDACTED]) at a total cost of \$13,000.00. Exhibits #2, #3 & #4.
3. DCHAA denied Prior Authorization ["PA"] request # [REDACTED] and sent a letter to petitioner dated December 22, 2015 and entitled *BadgerCare Plus Notice of Appeal Rights* informing her of the denial. Exhibits #1, #2, #3 & #4.
4. Petitioner is approximately 5 feet 5½ inches tall and weighs about 348 pounds which makes her Body Mass Index ["BMI"] about 56.6.
5. Petitioner has the following medical conditions: morbid obesity, diabetes mellitus type 2, hyperlipidemia, hypertension, sleep apnea, and cardiomyopathy (she also has need for a right knee arthroplasty); her medical conditions are currently controlled (although her medical provider states that her diabetes and hypertension are "poorly controlled"). Exhibits #1, #2, #3 & #4.

### DISCUSSION

MA may only reimburse providers for medically necessary and appropriate health care services and equipment listed in sections 49.46(2) and 49.47(6)(a) of the Wisconsin Statutes, as implemented by chapter DHS 107 of the Wisconsin Administrative Code. Some services and equipment are covered if a PA request is submitted and approved in advance of receiving the service. Some services and equipment are never covered by the MA program.

Section 49.46(2)(f) of the Wisconsin Statutes prohibits payment for gastric by-pass surgery unless it is performed because of a medical emergency as determined by Wisconsin Department of Health Services ["DHS"]. Wis. Stat. § 49.46(2)(f) (2013-14); See also, Wis. Admin. Code § DHS 107.06(4)(h) (August 2015).

DHS has interpreted the *medical emergency* requirement to include several criteria, one of which is that the person must have at least one documented high-risk, life-limiting comorbid medical condition capable of producing a significant decrease in health status that is demonstrated to be unresponsive to appropriate treatment. *ForwardHealth Update*, August 2011, No. 2011-44, found online at: <https://www.forwardhealth.wi.gov/kw/pdf/2011-44.pdf> .

The evidence in the record of this matter is that petitioner does not have at least one documented high-risk, life-limiting comorbid medical condition capable of producing a significant decrease in health status that is demonstrated to be unresponsive to appropriate treatment. It is true that in addition to morbid obesity petitioner's suffers from diabetes mellitus type 2, hyperlipidemia, hypertension, sleep apnea, and cardiomyopathy -- but the documentation in the record of this matter does not show that these are high-risk, life-limiting comorbid medical condition capable of producing a significant decrease in health status that have been demonstrated to be unresponsive to appropriate treatment. Exhibits #1, #2, #3 & #4. *Cormorbid* means that in addition to obesity the person must have another medical condition that is high-

risk, life-limiting, capable of producing a significant decrease in health status, and has been demonstrated to be unresponsive to appropriate treatment.

### **CONCLUSIONS OF LAW**

For the reasons discussed above, petitioner is not eligible for payment by the MA program for Laparoscopic Gastric Bypass/Roux-En-Y surgery.

**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 24th day of March, 2016

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\sSean P. Maloney  
Administrative Law Judge  
Division of Hearings and Appeals





**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 24, 2016.

Division of Health Care Access and Accountability