



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

HMO/171692

PRELIMINARY RECITALS

Pursuant to a petition filed January 27, 2016, under Wis. Stat. § 49.45(5)(a), and Wis. Admin. Code § HA 3.03, to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance (MA), a hearing was held on March 29, 2016, at Green Bay, Wisconsin. Two previously scheduled hearings were rescheduled at petitioner's request.

The issue for determination is whether the respondent correctly denied petitioner's request for prior authorization of a spinal cord stimulator trial¹ to address her chronic pain.

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: [Redacted]
United Healthcare
9800 Health Care Lane
Minnetonka, MN 55343

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

1 The requested procedure is referred to by various titles in the file documents including spinal cord stimulation, occipital nerve stimulation, implantable occipital nerve and C2 stimulator, spinal cord/peripheral nerve stimulator, peripheral neurostimulation, and simply, neurostimulation.

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County.
2. Petitioner filed this appeal to contest the denial by Petitioner's HMO of a request for prior authorization of a spinal cord stimulator trial to address her chronic pain
3. Petitioner is 47 years of age who suffers from severe and intractable head and neck pain.
4. In attempts to address her chronic pain, petitioner has received several rounds of cervical nerve injections, radiofrequency denervation, cervical nerve decompression and anterior fusion of C3-4 and C4-5, and has attempted to address the pain with medication. *See, Exhibit 3.*
5. On or about November 30, 2015, petitioner requested prior authorization of a spinal cord Stimulator Trial. *Petitioner's Omnibus Exhibit(POE), p. 7.*
6. Petitioner's HMO denied the prior authorization request on December 4, 2015, concluding that the request is not medically necessary as it does not meet the MCG Care Guideline for Implanted Electrical Stimulator, Spinal Cord. *Exhibit 3, Att. 3.*
7. The Division of Health Care Access and Accountability has sustained the denial of this request. The reason for sustaining the denial were that Forward Health guidelines for spinal column stimulators require either failed back surgery syndrome or complex regional pain syndrome, except in unusual circumstances. The DHCAA also opined that a review of the literature did not find evidence for the effectiveness of spinal stimulators for occipital neuralgia. *Id.*

DISCUSSION

Under the discretion allowed by *Wis. Stat., §49.45(9)*, the Department of Health Services (DHS) requires MA recipients to participate in HMOs. *Wis. Admin. Code, §DHS 104.05(2)(a)*. MA recipients enrolled in HMOs must receive medical services from the HMOs' providers, except for referrals or emergencies. *Wis. Admin. Code, §DHS 104.05(3)*.

The criteria for approval by a managed care program contracted with the DHS are the same as the general MA criteria. *See Wis. Admin. Code, §DHS 104.05(3)* which states that HMO enrollees shall obtain services "paid for by MA" from the HMO's providers. The department must contract with the HMO concerning the specifics of the plan and coverage. *Wis. Admin. Code, § DHS 104.05(1)*.

If the enrollee disagrees with any aspect of service delivery provided or arranged by the HMO, the recipient may file a grievance with the department or appeal to the Division of Hearings and Appeals.

Just as with regular MA, when the department denies a grievance from an HMO recipient, the recipient can appeal the department's denial within 45 days. *Wis. Stat., §49.45(5), Wis. Admin. Code, § DHS 104.01(5)(a)3.*

When determining whether to approve any service, the HMO, as with the Division of Health Care Access and Accountability (DHCAA), must consider the generic prior authorization review criteria listed at *Wis. Admin. Code, §DHS §107.02(3)(e)*:

(e) *Departmental review criteria.* In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;

5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;
 7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code, §DHS 101.03(96m).

For any prior authorization request to be approved, the requested service must satisfy the generic prior authorization criteria listed above. At their core, those criteria include the requirement that the service be medically necessary (as opposed to being needed, *e.g.*, for cosmetic, social or academic reasons). *Id.*, 1.

Petitioner testified that she has been diagnosed with occipital and trigeminal neuralgia, migraines, and interstitial gastritis. She noted that she has a stimulator in her sacral nerve to address the gastritis, and that it is working excellently. She reported numerous attempts to address her chronic pain, including counseling, acupuncture, massage, trigger point injections, cortisone injections, nerve blocks, radiofrequency ablations, surgical procedures, and medications including, but not limited to muscle relaxants, migraine drugs, fentanyl and Botox. At best, she noted, she has obtained temporary pain relief of varying degrees, and her medical provider has written to corroborate petitioner's complaints of debilitating side-effects and the fact that petitioner has needed increasingly higher doses of medication to control her pain.

Petitioner provided letters from her treating medical providers, [REDACTED], [REDACTED], [REDACTED], DO, and Dr. [REDACTED], MD Neurology, recommending that she proceed with neurostimulation to treat her chronic pain. POE, pp. 15-17.

The respondent contends, however that the effectiveness of the requested procedure has not been established and that a review of several carriers' policies have found that spinal stimulator devices are experimental. The respondent cites to United Healthcare Medical Policy CS086.E, which states that neurostimulation or electrical stimulation is unproven and not medically necessary for the treatment of occipital neuralgia or headaches including migraine, cluster, and cervicogenic headache. See, POE, p. 86. Unfortunately, as the respondent has noted, the Wisconsin Administrative Code does not have a specific prior authorization guideline for peripheral or occipital nerve stimulation.

Both parties have cited to and/or criticized medical studies addressing the efficacy of the requested procedure. Both parties have cited unrelated healthcare networks' coverage determinations both for and against the neurostimulation procedure. After a review of the substantial record before me, I find that the petitioner has established the medical necessity of the requested procedure. Specifically, I note that the request pertains to a trial only; as petitioner testified, if the trial is unsuccessful, full implementation of the neurostimulator will not be pursued. If full implementation is warranted, petitioner understands that she will again have to pursue prior authorization approval. This is a logical, reasonable, and practical manner of addressing what, at this point, appears to be petitioner's last resort in achieving pain control.

I note to the petitioner that her provider will not receive a copy of this decision. In order to receive the approved procedure, spinal cord stimulator trial, she must provide a copy of this decision to her provider, who then must submit a new prior authorization request.

CONCLUSIONS OF LAW

The requested spinal cord stimulator trial is medically necessary.

THEREFORE, it is ORDERED

That the petitioner's provider is authorized to provide the spinal cord stimulator trial discussed in this decision. To receive reimbursement it must submit its 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 19th day of May, 2016

\s\sPeter McCombs
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
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on May 19, 2016.

Division of Health Care Access and Accountability

Attorney [REDACTED] [REDACTED]