



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:



DECISION

MPA/173696

PRELIMINARY RECITALS

Pursuant to a petition filed April 15, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Office of the Inspector General [“OIG”] in regard to Medical Assistance [“MA”], a Hearing was held via telephone from Madison, Wisconsin on May 24, 2016.

The issue for determination is whether OIG was correct to deny Prior Authorization [“PA”] for MA payment for Magnetic Resonance Imaging [“MRI”] of the lumbar spine without contrast for petitioner.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

BY: , RN, Registered Nurse Consultant
Office of the Inspector General
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 (CARES # ; 54 years old) is a resident of Milwaukee County, Wisconsin.

2. Petitioner has complaints of lower back pain.
3. On March 4, 2016 petitioner's provider, [REDACTED] of Oak Creek, Wisconsin, requested PA (P.A. # [REDACTED]; MedSolutions file # [REDACTED]) for MA coverage of an MRI of the lumbar spine without contrast for petitioner.
4. OIG denied PA # [REDACTED] for MA coverage of an MRI of the lumbar spine without contrast for petitioner; OIG sent a letter to petitioner dated March 7, 2016 and entitled *BadgerCare Plus Notice of Appeal Rights* informing her of the denial.

DISCUSSION

As with any eligibility denial, the burden is on petitioner to show that she is eligible for the requested services. *Lavine v. Milne*, 424 U.S. 577, 583-584 (1976). Petitioner has failed to make such a showing.

By law, MA pays only for medically necessary and appropriate health care services when provided to currently eligible MA recipients. Wis. Admin. Code § DHS 107.01(1) (August 2015); See also, Wis. Stat. §§ 49.46(2) & 49.47(6) (2013-14). In order for a service to be *medically necessary* it must meet several specific requirements. See, Wis. Admin. Code § DHS 101.03(96m) (December 2008).

In determining whether to approve or disapprove a request for PA the limitations imposed by pertinent federal or state statutes, rules, regulations, or interpretations must be considered. Wis. Admin. Code § DHS 107.02(3)(e)9. (August 2015). Written state policy limitations provide that MedSolutions, a private radiology benefits manager, is authorized to administer PA MRI's. MedSolutions uses approved national clinical guidelines for imaging services when making PA determinations. *ForwardHealth Update* October 2010 No. 2010-92. Those national clinical guidelines require that an MRI of the lumbar spine cannot be approved unless there has been a failure of a recent (within 3 months) 6-week trial of a physician-directed treatment and/or observation. MedSolutions *Spine Imaging Guidelines* SP-5.¹ There is no evidence in the record of this matter that petitioner has failed a recent (within 3 months) 6-week trial of a physician-directed treatment and/or observation. Therefore, OIG's denial must be sustained.

Petitioner states that she did not know about the denial until after the MRI had already been performed. Petitioner should note that the Wisconsin Administrative Code makes abundantly clear that the provider is solely responsible for the accuracy and completeness of PA requests. Wis. Admin. Code § DHS 106.02(9)(e)1. (January 2014). When a service must be authorized by DHCAA in order to be covered, the recipient may not be held liable by the certified provider unless the prior authorization was denied by DHCAA and the recipient was informed of the recipient's personal liability before provision of the service. Negligence on the part of the certified provider in the prior authorization process shall not result in recipient liability. Wis. Admin. Code § 104.01(12)(c) (December 2008).

¹ There is an exception to this require if certain "Red Flag Indications" are present such as: motor weakness; aortic aneurysm or dissection; cancer; cauda equine syndrome; fracture; or, infection. MedSolutions *Spine Imaging Guidelines* SP-1.2. There is no evidence in the record of this matter that petitioner has any of those Red Flag Indications.

CONCLUSIONS OF LAW

For the reasons discussed above, OIG was correct to deny PA for MA payment for an MRI of the lumbar spine without contrast for petitioner.

NOW, THEREFORE, it is

ORDERED

That 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 7th day of June, 2016

\sSean P. Maloney
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 June 7, 2016.

Division of Health Care Access and Accountability