



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MPA/173806

PRELIMINARY RECITALS

Pursuant to a petition filed April 20, 2016, under Wis. Stat., §49.45(5), to review a decision by the Division of Health Care Access and Accountability (DHCAA) to deny Medical Assistance (MA) authorization for bariatric surgery, a hearing was held on May 25, 2016, at Madison, Wisconsin, with the parties appearing by telephone.

The issue for determination is whether petitioner met the criteria for the requested surgery.

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Written submission of [Redacted], MD

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Dane County.
2. Petitioner is 5'11", weighs 381 pounds, and has a body mass index of 53.16 kg/m².
3. On March 25, 2016, Dr. [Redacted] requested prior authorization for gastrectomy surgery, PA no. [Redacted]. By a letter dated April 5, 2015, the DHCAA denied the request.
4. In notes dated January, 2016 petitioner admitted to providers that he regularly was using marijuana for pain control.

DISCUSSION

Wis. Stat., §49.46(2)(f) provides as follows concerning MA benefits: “Benefits under this subsection may not include payment for gastric bypass surgery or gastric stapling surgery unless it is performed because of a medical emergency.”

The criteria for approval of a gastric bypass, as of September 1, 2011, are as follows:

The approval criteria for PA requests for covered bariatric surgery procedures include ... the following:

□ The member has a body mass index greater than 35 with at least one documented high-risk, life-limiting comorbid medical conditions capable of producing a significant decrease in health status that are demonstrated to be unresponsive to appropriate treatment. There is evidence that significant weight loss can substantially improve the following comorbid conditions:

- Sleep apnea.
- Poorly controlled Diabetes Mellitus while compliant with appropriate medication regimen.
- Poorly controlled hypertension while compliant with appropriate medication regimen.
- Obesity-related cardiomyopathy.

ForwardHealth Update, No. 2011-44, effective September 1, 2011. There also must be documented prior attempts to lose weight, three months participation in a weight loss program, and medical and psychological evaluations to determine if the person is an appropriate candidate for such surgery. Finally, and importantly to this case, the person has to have been free of illicit drug use and alcohol abuse for six months prior to the surgery.

The use of the Department’s periodic Updates to set MA coverage guidelines is approved by law. See Wis. Admin. Code, §DHS 108.02(4). The criteria at issue here were drafted because of the mandate that gastric bypass is limited to medical emergencies. Wis. Admin. Code, §DHS 107.06(4)(h).

In this case the only reason for the denial was petitioner’s January, 2016 admissions that he was actively using marijuana. Since the admissions were just two months prior to the request for the surgery petitioner did not meet the approval criteria. He apparently meets it in all other ways.

Petitioner testified that he has not used marijuana since January. At this point a new prior authorization request would have to be filed with a report verifying the cessation of the drug usage. I cannot grant authorization of petitioner’s word alone. Furthermore, it is getting close to the six-month standard from cessation to surgery, so I would suggest that petitioner work on getting the necessary medical report so that the new authorization can be filed.

CONCLUSIONS OF LAW

The DHCAA correctly denied the requested bariatric surgery because petitioner failed the requirement that he be free of illicit drug use for six months.

THEREFORE, it is

ORDERED

That the petition for review 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 6th day of June, 2016

\s\sBrian C. Schneider
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 June 6, 2016.

Division of Health Care Access and Accountability