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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MPA - 175608

PRELIMINARY RECITALS

Pursuant to a petition filed on July 15, 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 regarding Medical Assistance (MA), a hearing was held on October 21, 2016, by telephone.

The issue for determination is whether the petitioner is entitled to medical assistance reimbursement for foot orthotics.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED] |
[REDACTED]
[REDACTED]

Respondent:

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

By: [REDACTED]
Division of Health Care Access and Accountability
PO Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES #) is a resident of Bayfield County.

2. On May 23, 2016, the petitioner with Midwest Medical Equipment and Supplies requested custom foot orthotics for both feet at a cost of \$316.40. The department denied the request on June 1, 2016.
3. The prior authorization request indicates that the petitioner's diagnoses are pes planavalgus and gersu valgum.
4. The petitioner has minimal to moderate arthritic changes throughout her feet.
5. The petitioner does not have a gross foot deformity.

DISCUSSION

The Division of Health Care Access and Accountability denied the petitioner's request for foot orthotics. Section DHS 107.24(4)(f) of the Wisconsin Administrative Code states:

Orthopedic or corrective shoes or foot orthoses shall be provided only for postsurgery conditions, gross deformities, or when attached to a brace or bar. These conditions shall be described in the prior authorization request.

“Arch supports are not considered a brace.” Wis. Admin. Code, § DHS 107.24(2)(c)2. Medical assistance regulations specifically prohibit coverage of foot orthoses for the following conditions:

1. Flattened arches, regardless of the underlying pathology;
2. Incomplete dislocation or subluxation metatarsalgia with no associated deformities;
3. Arthritis with no associated deformities; and
4. Hypoallergenic conditions;

Wis. Admin. Code, § DHS 107.24(5)(a).

The petitioner's primary diagnoses are “pes planavalgus” and “gersu valgum.” Pes Planvalgus means flat feet; gersu valgum means knock-kneed. Her records indicate that her primary problem is “[p]ainful flat feet.” It also mentions various degrees of arthritic changes through her feet. Nowhere in her records does it indicate that there are any deformities associated with her arthritis. She contends that she has a gross foot deformity because she has an extra bone in her foot. Her assertion of an extra bone is confirmed by medical notes that indicate “gorriloid navicular bone,” the term for a congenital extra bone not found in normal feet. But nothing in her records indicates that this condition is a significant deformity that adds to her foot pain.

The petitioner has the burden of proving by the preponderance of the credible evidence that she is entitled to the requested orthotics. This requires medical evidence to support her claim. Because there is no evidence in her medical records of a gross foot deformity or that anything other than her flat feet and arthritic changes have caused her pain, I must uphold the agency's denial. This does not mean that the orthotics would not provide any relief to her. They probably would. But they do not meet the standards set by the medical assistance regulations that I am required to enforce. Therefore, I must uphold the department's decision.

CONCLUSIONS OF LAW

The department correctly denied the requested foot orthotics because they are not medically necessary.

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, **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 10th day of November, 2016

\s _____
Michael 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 November 10, 2016.

Division of Health Care Access and Accountability