



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████████
██████████
██████████

DECISION
Case #: MPP - 211770

PRELIMINARY RECITALS

Pursuant to a petition filed on January 11, 2024, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Medicaid Services regarding Medical Assistance (MA), a hearing was held on February 13, 2024, by telephone.

The issue for determination is whether the department correctly acted to enroll petitioner in the MA Pharmacy Service Lock-In Program.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████
██████████
██████████

Respondent:

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

By: Katie Counts
Division of Medicaid Services
PO Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Beth Whitaker
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #) is a resident of Brown County who receives Medical Assistance.
2. Petitioner was required to be enrolled in the Pharmacy Lock-In Program for a two year period ending February 28, 2024.

3. On December 20, 2023, the agency conducted a review of pharmacy services provided to petitioner through MA from December 1, 2022 to December 1, 2023.
 1. The review revealed multiple prescriptions for controlled substances, including a stimulant, multiple sedative hypnotics, and multiple benzodiazepines, totaling 188 prescriptions, of which . 75 were for controlled substances which are monitored and restricted by the Program because of high potential for abuse.
 1. The review revealed that petitioner’s refill history included early refills of all controlled substance by several days each month, over time putting her ahead of schedule by 28 days.
 1. Petitioner’s prescriptions for controlled substances were obtained from a single prescriber and a single pharmacy.
2. On December 28, 2023, the agency issued to petitioner a letter informing her that it would continue her enrollment in the Pharmacy Services Lock-In Program because she “received restricted medications during (her) lock-in period from a prescriber other than (her) assigned lock-in prescriber(s).”

DISCUSSION

The Wisconsin Administrative Code, §DHS 104.03(1)(a), provides as follows:

If the department discovers that a recipient is abusing the program, including abuse under s. HFS 104.02(5), the department may require the recipient to designate, in any or all categories of health care provider, a primary health care provider of the recipient's choice, except when free choice is limited under s. HSS 104.035.

The designation of a primary provider is known as the MA lock-in program. Included in the abuses under §DHS 104.02(5) is (i) "knowingly obtaining health care in excess of established program limitations, or knowingly obtaining health care which is clearly not medically necessary."

The purpose of the MA Pharmacy Service Lock-In Program is to coordinate health care services for MA recipients who abuse or misuse MA/BCP by seeking duplicate or medically unnecessary services, including specifically controlled substance prescriptions. ForwardHealth guidelines, Topic #274. Abuse and misuse are defined under Wis. Admin. Code §DHS 104.02 and include the following:

- * Duplicating or altering prescriptions
- * Feigning illness, using false pretense, providing incorrect enrollment status, or providing false information to obtain a service
- * Seeking duplicate care from more than one provider for the same or similar condition
- * Seeking medical care that is excessive or not medically necessary.

Id.

The effect of enrollment in the lock-in program restricts a recipient to one prescriber and one pharmacy for controlled substances, but a second prescriber and pharmacy is allowed when a specialty provider (such as treatment) is involved. The program does not restrict who the petitioner chooses as providers. There is no restriction on prescribers or pharmacies for non-controlled medications.

The agency informed petitioner of the decision to continue Lock-In Program enrollment by letter on December 28, 2023, citing Wis. Stats. Sec. 49.45(9) and Wis. Admin Code DHS 104.03 as authority. The letter asserted as a factual basis for the decision that petitioner obtained prescriptions from an unauthorized pharmacy provider. Petitioner denied this, stating that she always got prescriptions from her authorized pharmacy, unless she was required to get them from the Aurora pharmacy in association with a procedure there. The agency’s review (Exhibit 1) did not document any prescriptions from unauthorized providers. The agency’s representative at hearing, Katie Counts, a pharmacist employed by Acentra, the organization contracted by the Department to conduct the pharmacy lock-in review, testified that there

was no evidence of use of unauthorized pharmacies and that was not the basis for continued enrollment. She testified that the rationale language in the December 28, 2023 letter was selected by a committee and that she would not have chosen that language.

In its written submission at hearing, the agency's argument for continuing petitioner's enrollment was two-fold: 1) a pattern of misutilization of Medicaid benefits by this petitioner due to consistent early refills and prescriptions without an associated diagnosis and 2) an interest in avoiding medical complications. Counts testified that early prescription refill/overutilization was the primary reason for re-enrollment. She said that the concerns about the health risks associated with the combination of medications being used was not the sole reason and was, alone, insufficient as a basis for re-enrollment.

Regarding misutilization, the review of paid claims showed that petitioner sought health care services in excess of reasonable medical needs by a pattern of early refills. In addition, the usage of medications without supporting diagnoses is considered treatment that is not medically necessary. Petitioner testified that she utilizes a certain approved pharmacy which she identified as [REDACTED] on [REDACTED], which is closed on weekends and holidays and that she got prescriptions filled early because of the pharmacy's limited hours, specifically that they were closed on weekends and holidays. She testified that she did not get early refills in order to misuse medication. She testified regarding the hardship in having to use only one pharmacy as it prevents her from travelling. Petitioner also testified regarding her December 21, 2023 knee surgery, which I find to be not relevant because the surgery was after the review period and no prescriptions filled for treatment related to the surgery are the basis for the decision being appealed.

First, regarding the issue of notice, the re-enrollment letter did not state the rationale that the agency actually relied on. It did not prove what it asserted as the rationale. Petitioner received no notice of the actual reason, and arguably had no opportunity to prepare for a hearing on that issue. However, at hearing she did not raise this issue, seemed to be aware of the agency's reasoning and presented testimony relevant to the early refill/misutilization rationale. I find that the Department's December 28, 2023 letter gives petitioner notice regarding the decision to re-enroll her in the program and that it meets the requirement defined in 42 CFR Chapter IV (10-1-92 Edition) of the Health Care Financing Administration regulation CFR 431.54(e)(1) requiring that "The agency give the member notice and opportunity for a hearing (in accordance with procedures established by the agency) before imposing the restrictions."

The agency showed that petitioner consistently had prescriptions filled early, resulting in 28 days of additional medication over a one year period; that the prescribed medications included a stimulant for which she had no associated diagnosis and multiple medications with high risk of addiction. Petitioner's testimony about refilling early because of the pharmacy being closed on weekends and holidays was not credible. The agency's review of her prescriptions showed no pattern regarding day of the week or holidays, for example a pattern of frequent refills on Fridays, because the pharmacy was closed on Saturday and Sunday. There was not one month in which she had a prescription refilled more than 30 days from the last refill, in spite of preceding early refills that would have given her excess medication.

To show a basis for its action in this case, the agency must show abuse or misuse of medication under Wis. Admin. Code Sec. 104.02. It relies on the provision of that code "seeking medical care that is excessive or not medically necessary."

The administrative code defines the term "medically necessary":

"Medically necessary" means a medical assistance service under Ch. DHS 107 that is:
A) Required to prevent, identify or treat a member's illness, injury or disability; and

B) Meets the following standards:

- 1) Is consistent with the member's symptoms or with prevention, diagnosis or treatment of the member's illness
- 2) Is provided consistent with the 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 member's diagnosis, the Member's symptoms or other medically necessary services being provided to the member...
- 5) Is not duplicative with respect to other services being provided to the member ..
- 6) 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 member, and
- 7) Is the most appropriate supply or level of service that can safely and effectively be provided to the member.

Administrative Code DHS 101.03(96m)

The petitioner's conduct meets the standard because she sought and obtained medication in excess of what was prescribed. The prescriptions are the best evidence of the medically necessary amount of medication. Petitioner consistently obtained more than that amount. The agency also argued that the cumulative effect of consistent early prescription refills provided petitioner with excessive services. Obtaining almost a full month of medication beyond what was prescribed is excessive.

The agency showed by a preponderance of the evidence that petitioner abused or misused medication by seeking medical care that was excessive and not medically necessary. I find that the agency correctly re-enrolled petitioner in the pharmacy lock-in program.

CONCLUSIONS OF LAW

The agency correctly re-enrolled petitioner in the pharmacy lock-in program based on her seeking and obtaining medication that was excessive in quantity and not medically necessary.

THEREFORE, it is ORDERED

That the petition for review 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, 4822 Madison Yards Way, 5th Floor North, 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

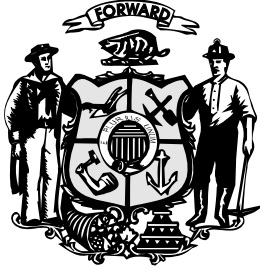
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 21st day of February, 2024



\s _____
Beth Whitaker
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 February 21, 2024.

Division of Medicaid Services