



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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██████████
██████████████████

DECISION
Case #: MPA - 214372

PRELIMINARY RECITALS

Pursuant to a petition filed on July 26, 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 September 12, 2024, by telephone. The record was held open for 42 days to allow petitioner's representative time to submit additional information, although no new information was received.

The issue for determination is whether the petitioner's provider has justified MA coverage of genetic testing for petitioner.

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: written submittal of: Dr. Steve Tyska
Division of Medicaid Services
PO Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Waupaca County. He is 14 years of age.
2. On June 21, 2024 petitioner's medical provider submitted a prior authorization (PA) request to the agency for genetic testing (service code 81479).
3. On July 1, 2024 the agency denied the PA (PA # [REDACTED]) because it was not found to be medically necessary.

DISCUSSION

In reviewing a PA request the agency must consider the general PA criteria found at Wis. Adm. Code § DHS 107.02(3) and the definition of “medical necessity” found at Wis. Adm. Code § DHS 101.03(96m). Wis. Adm. Code § DHS 101.03(96m) defines medical necessity in the following pertinent provisions:

“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; ...
 3. Is appropriate with regard to generally accepted standards of medical practice; ...
 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;
 8. ...[I]s 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.

In a PA request it is the provider's responsibility to justify the need for the service. Wis. Admin. Code, § DHS 107.02(3)(d)6. The petitioner is requesting PA for genetic testing, specifically for a Charcot-Marie-Tooth (CMT) - Axonal Neuropathy panel.

The agency explained that it considers genetic testing medically necessary when the clinical record outlines specific substantive interventions in the person's medical management as a direct result of the genetic test findings. The agency reviewed the requirements for “medically necessary” above as well as the online evidence-based clinical information resources in UptoDate (Charcot-Marie-Tooth disease: Genetics, clinical features, and diagnosis) and Hayes (Charcot-Marie-Tooth Type 1A (PMP22)). The agency determined therefrom that the results of the requested genetic testing would not have a substantial impact on petitioner's medical management, stating, “treatment for CMT1A is generally symptomatic and can include pain management, exercise, orthotics, or orthopedic surgery for foot and ankle problems. For this reason, molecular diagnosis will not affect course of treatment for this disease.” See Exhibit 1. The agency also stated that it appears the most likely cause of the petitioner's foot pain is structural rather than neuropathic, per the petitioner's treating neurologist. Id. Further, the agency adds that petitioner is currently being followed by neurology, physical therapy, and orthopedic surgery and it is expected that his unique clinical picture is considered in toto by his treating physicians. Id. He currently receives comprehensive and ongoing clinical evaluation/intervention/surveillance based on his individual clinical presentation. Id. Genetic testing is not necessary to identify organs which need surveillance and is not

covered for family planning, and monitoring should be based on clinical factors. *Id.* Heightened suspicion for disease can and should be investigated as needed with or without genetic testing. *Id.* The petitioner’s provider has not provided any information about a clinical intervention that might possibly lead to significant amelioration of a clinical syndrome as a result of genetic testing. *Id.* Accordingly, the agency could not confirm the PA request was cost effective, medically valuable or useful and not experimental in nature, under the medically necessary criteria above.

Petitioner’s mother testified at hearing and clearly wants what is best for her son. The petitioner’s provider stated with the PA that petitioner’s features are “strongly suspicious for an underlying unifying diagnosis. We recommend a carefully curated gene panel as the patient’s features can be seen with a number of axonal neuropathies with many different genetic etiologies that cannot be differentiated by review of medical history, previous labs, and/or procedures such as EMG, or physical examination alone.” See Exhibit 2. The provider also stated, “a specific diagnosis would allow us to exclude unnecessary tests for the purpose of ongoing diagnostic evaluation and generalized screening measures due to an unknown disease etiology, reducing inappropriate costs incurred by the family, insurance carrier, and medical system.” *Id.* The provider cites a statement from the American Association of Neuromuscular & Electrodiagnostic Medicine (AANEM) that the AANEM believes that “performing genetic testing to arrive at a specific molecular diagnosis is a critical step in providing high-quality care to neuromuscular patients. The cost of testing should not be a deterrent, as there are important clinical, safety, psychosocial, and research benefits.” *Id.* Petitioner’s mother added that with the crippling pain that her son is in, they are simply trying to rule out and/or confirm what his providers and she are managing and to aid in his quality of life.

The review of the medical literature indicates that genetic screening for someone such as this petitioner is not efficacious under the medically necessary criteria. In sum, I must agree with the agency based on the evidence at this time. While I understand that petitioner wants to rule out or confirm his disease, there must be clinical evidence that the requested service is medically necessary. The evidence presented does not do that. I cannot find that the requested testing has proven medical value for someone like this petitioner or that it would have a substantial impact on his medical management. Unfortunately, MA does not cover every good or service that a participant may want.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division’s hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

If the petitioner develops better evidence, a new PA can always be filed.

CONCLUSIONS OF LAW

Petitioner’s provider has not established that the requested genetic testing is medically necessary.

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, 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.

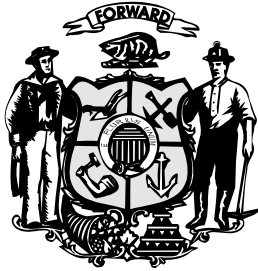
APPEAL TO COURT

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 Milwaukee,
Wisconsin, this 15th day of November, 2024

\s _____
Kelly Cochrane
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 15, 2024.

Division of Medicaid Services