



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]

DECISION
Case #: FCP - 203537

PRELIMINARY RECITALS

Pursuant to a petition filed on October 20, 2021, under Wis. Admin. Code § DHS 10.55, to review a decision by the MY Choice Family Care regarding Medical Assistance (MA), a hearing was held on January 12, 2022, by telephone.

The issue for determination is whether the MCO correctly denied a prior authorization request for dental implant-retained dentures.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]

Petitioner's Representative:

[Redacted]
Wisconsin Board on Aging And Long Term Care
1402 Pankratz St., Suite 111
Madison, WI 53704

Respondent:

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

By: [Redacted]
MY Choice Family Care
10201 Innovation Dr, Suite 100
Wauwatosa, WI 53226

ADMINISTRATIVE LAW JUDGE:

Beth Whitaker
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner ([Redacted]) is a resident of Dane County.

2. Petitioner has Family Care Partnership with MyChoice Wisconsin acting as her managed care organization (MCO).
3. Petitioner has been diagnosed with esophageal reflux, dysphagia, esophageal dysmotility; disorder, celiac disease and short gut syndrome, severe periodontal disease and missing teeth.
4. On August 5, 2021, the MCO had a Functional Screen performed and developed a member-centered plan Member centered plan development, in effect from August 11, 2021 to February 28, 2022.
5. On or before July 14, 2021, petitioner's provider [REDACTED] [REDACTED] Dental Health Associates requested prior authorization of dental implant-retained dentures for petitioner.
6. On July 14, 2021, the MCO issued to petitioner a Notice of Denial of Dental Coverage, regarding a request for semi-precision attachment abutment #40 and #30.
7. On August 16, 2021 the Division received petitioner's appeal.
8. On September 14, 2021 the MCO's Grievance and Appeal Committee hearing was held and the denial was upheld because "because dental implants of any kind are not covered by Forward Health."
9. On October 25, 2021, the Division received petitioners request for fair hearing.

DISCUSSION

The Family Care and Family Care Partnership program (FCP), which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10. The DHS contracts with Managed Care Organizations (MCOs) to deliver the Family Care Program supports and services to eligible individuals through a managed care service delivery model to enrollees in need of long-term care. The supports and services that are to be covered by the MCO are specified in Addendum VII of the contract.

The FCP benefit is available to eligible persons only through enrollment in a care management organization (CMO). Wis. Adm. Code §DHS 10.41(1). The terms CMO and MCO (Managed Care Organization) are often used interchangeably in the FCP. Services provided under the FCP are determined through an individual assessment of enrollee needs and values and detailed in an individual service plan (ISP) unique to each enrollee. Each CMO:

shall have available at least the services and support items covered under the home and community-based waivers under 42 USC 1396n (c) and ss. 46.275, 46.277 and 46.278, Stats., the long-term support community options program under s. 46.27, Stats., and specified services and support items under the state's plan for medical assistance. In addition, a CMO may provide other services that substitute for or augment the specified services if these services are cost-effective and meet the needs of enrollees as identified through the individual assessment and service plan.

Wis. Adm. Code §DHS 10.41(2).

While the client has input, the MCO does not have to provide all services the client desires if services provided reasonably and effectively addresses all of the long-term care needs and outcomes. See Wis. Adm. Code, §DHS 10.44(2)(f).

Petitioner's dental provider requested dental implant-retained dentures because her chronic periodontal disease and missing teeth contribute to minimal bony ridges which cause poor retention of dentures and compromise her ability to eat. Her dental provider stated clearly that complete dentures are ineffective to allow her to chew and eat and stated clearly that implant-retained dentures are the only option for her. See

Dr. [REDACTED] letter, April 29, 2021. Her gastrointestinal medical provider added that petitioner “has moderate to severe esophageal dysphagia as a result of prior fundoplication and esophageal dysmotility disorder called esophagogastric junction outflow obstruction (EGJOOO). She needs adequate dentition to help with swallowing/dysphagia.” See Dr. [REDACTED] letter, April 5, 2021.

The basis for denial was that the service was not a covered service, pursuant to the MCO contract with DHS approved by Centers for Medicare and Medicaid Services under s. 1932(a) of the SSA [42 USC 1396u-2] and under 42 CFR 438.6(a) and contained in the 2020 Family Care and Family Care Partnership Contract, Addendum VII, p. 367 “Medicaid State Plan Services – Partnership Benefit Packages. The benefit package document available online contains a link to Attachment 3.1-A, Supplement 1 which contains a list of services not provided Addendum VII. C.1.-9. The service is excluded under item 9 and identified in Wis. Admin. Code DHS 107.07(4)(i) as non-covered.

Petitioner’s ombudsman made all possible arguments for approval of the request as effectively as they could be made, first arguing that the requested procedure is a “fixed prosthodontic service,” a covered service under Wis. Admin. Code DHS 107.07(1)(g) and 107.01(2)(a)(7) when provided by or under the supervision of a dentist or physician within the scope of practice of dentistry as is the case here, and subject to prior authorization. She established that the American Dental Association defines a dental implant as a type of fixed prosthesis. Regardless, the agency’s rules expressly exclude dental implants from coverage. The fact that they may be included in a larger category of services which are generally covered does not negate that exclusion. Whether or not a dental implant is a type of fixed prosthesis, it is a non-covered service.

The ombudsman then argued for applying the medical necessity analysis based on Wis. Adm. Code, § DHS 107.02(3)(e) and 101.03(96m) and the Resource Allocation Decision (RAD) process, citing OFCE Memo 13-02. Petitioner’s providers provided persuasive evidence that dental implants are necessary for her. Unfortunately for this petitioner, these criteria and methods of decision-making apply to services that are covered. I cannot reach this analysis in this case because dental implants are expressly identified as a non-covered service under the MCO/DHS Contract, Addendum VII. Also see DHS 107.07(4)(i).

Family Care may pay for services and items that are outside of the benefit package, based on options that are cost-effective and effective to support the member’s long-term care outcome however, they are not required to and petitioner does not have a right to appeal the MCO’s decision to deny items or services that are not within the Family Care benefit package. The MCO did not make an argument that the requested implant retained dentures are not medically necessary. It did not claim that there is an alternative procedure that is covered that would meet petitioner’s medical needs. It is not required to do either. It may simply deny the service as non-covered, regardless of petitioner’s individual needs and circumstances, and that is what it has done. I have no authority to order the MCO to cover the requested service, even when the evidence shows that other available services, including non-implant-retained dentures, are ineffective for her, there is no alternative to implants to restore her dentition adequate to allow her to chew food, and she has non-dental medical conditions that make it particularly important that she has adequate dentition.

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). The court in *Hanson* stated that the policy behind this principle is to assign the burden to the party seeking to change a present state of affairs. By seeking to add a service/equipment, petitioner is the moving party and must prove by a preponderance of evidence that the added service/equipment is justified.

Petitioner has the burden of proof and failed to show that the requested implants are a covered service under her benefit plan or that there exists any basis for ordering payment for this non-covered service.

CONCLUSIONS OF LAW

The MCO correctly denied petitioner’s request for dental implant-retained dentures.

THEREFORE, it is **ORDERED**

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

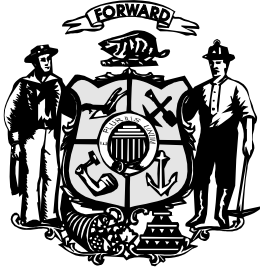
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 28th day of January, 2022

vs 

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 January 28, 2022.

MY Choice Family Care
Office of Family Care Expansion
Health Care Access and Accountability

