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**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

██████████  
██████████  
██████████

**DECISION**  
Case #: HMO - 206640

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on October 18, 2022, under Wis. Stat. § 49.45(5)(a), and Wis. Admin. Code § HA 3.03, to review a decision by the Division of Medicaid Services regarding Medical Assistance (MA), a hearing was held on December 15, 2022, by telephone.

The issue for determination is whether the agency correctly denied Petitioner's request to obtain care from an out-of-network provider.

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: Michelle Rocca  
Division of Medicaid Services  
PO Box 309  
Madison, WI 53701-0309

**ADMINISTRATIVE LAW JUDGE:**

Nicole Bjork  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County. Petitioner's diagnoses include pelvic pain, endometriosis, and fibroids. Petitioner's HMO is UnitedHealthcare Plan (HMO).
2. Petitioner's in-network physician was Dr. Verma. However, Dr. Verma referred Petitioner to Dr. Grace Janik, whose office was in the same building. Dr. Janik is not an in-network provider. Petitioner met with Dr. Janik, but did not realize at that time that Dr. Janik was out-of-network. Subsequently, after an HMO appeal process, the HMO retroactively approved that one visit with Dr.

- Janik. Approval was granted since Petitioner did not realize that Dr. Janik was out-of-network, since Dr. Verma was in-network and did refer her to Dr. Janik. However, the agency further noted that the retroactive approval was a one-time approval and that no additional visits with Dr. Janik would be approved since Dr. Janik is not in-network.
3. On August 8, 2022, Petitioner filed another appeal with the HMO to obtain a referral for the same out-of-network provider, Dr. Janik.
  4. On August 17, 2022, the HMO denied Petitioner's request for a referral for Dr. Janik, due to "the provider does not work with your health plan. Based on health plan rules, it must be with providers that work with your plan if one is available. The request for a non-plan provider is not approved." Exhibit 2. Petitioner was then provided with the name of an in-network provider and offered assistance in setting up an appointment.
  5. On September 20, 2022, the HMO conducted a panel hearing regarding the August 17, 2022 denial. Petitioner chose not to participate in the hearing. The panel reviewed all available information, including medical records from Dr Verma. No records were supplied by Dr Janik. The panel upheld the second denial for an appointment with Dr Janik, an out-of-network provider.
  6. On September 21, 2022, the HMO sent Petitioner a notice informing her that the August 17, 2022 denial was upheld. The notice again informed Petitioner that Dr Janik is "not with the plan" and "the plan does not cover infertility treatments." Petitioner was again provided with names of two local in-network providers who treat both infertility and endometriosis and who would be able to provide services covered by the plan. Petitioner was further informed that the [REDACTED] would help her schedule an appointment with an in-network provider.
  7. At the time of hearing, Petitioner had not yet contacted anyone in the Health Plan for scheduling assistance, and there were no claims for an appointment with any another provider.
  8. Petitioner filed an appeal of the August 17, 2022, denial with the Division of Hearings and Appeals. Petitioner testified at hearing that her previous in-network physician, Dr. Verma, is now gone. Petitioner further testified that she did call some of the in-network providers but that one had a one-month waitlist, one informed her that "they aren't taking those kinds of patients," and another "sent" her back to Dr. Janik.

### DISCUSSION

Under the discretion allowed by Wis. Stat. §49.45(9), the Department of Health Services ("the department") requires certain Medical Assistance (MA) recipients to participate in HMOs. Wis. Admin. Code §DHS 104.05(2)(a). An MA recipient enrolled in an HMO must receive MA services from the HMO's providers, except for referrals or emergencies. See Wis. Admin. Code §DHS 104.05(3). HMOs must provide the same services as those provided to persons enrolled in fee for service MA or BadgerCare Plus. Wis. Admin. Code §DHS 104.05(3).

MA services are covered if they are medically necessary. A service is medically necessary if it is "[r]equired to prevent, identify or treat a recipient's illness, injury or disability..." and if it 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;
2. Is provided consistent with 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 recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
5. Is of proven medical value or usefulness and, consistent with s. HFS 107.035, is not experimental in nature;
6. Is not duplicative with respect to other services being provided to the recipient;
7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
8. 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 recipient; and
9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code §DHS 101.03(96m)(a).

At the outset it is important to address the scope of the appeal involved here. The original request that was denied by the HMO was for out-of-network coverage for care by Dr. Grace Janik, not for any infertility treatments/services. The record does not reveal any request for infertility treatment/services having been submitted to the HMO for review and consideration. Thus, the issue ripe for appeal is whether the HMO's denial of coverage of care by an out-of-network physician was appropriate.

The HMO does not contest that Petitioner has medical conditions (pelvic pain and endometriosis) that require medical care. Its position is that these diagnoses are common and can be appropriately treated by an in-network physician.

Petitioner has the burden to demonstrate medical necessity for the out-of-network treatment. Her position is that she tried to see in-network physicians but is having difficulty obtaining an appointment. She further testified that she believes she should see Dr. Janik because other physicians "keep referring" her back to Dr. Janik. Thus, Petitioner testified, Dr. Janik should be the one she obtains treatment from. Petitioner further testified regarding negative experiences with prior medical treatment.

I understand that Petitioner has had negative medical experiences in the past and that Petitioner feels as though Dr. Janik will offer her the best care. But she has the burden to show that care by an out-of-network provider is medical necessary, as that term is defined above. She has not met that burden in this case. The record before me does not contain medical testimony or medical documentation justifying the request for an out-of-network provider. The evidence provides no justification as to why in-network treatment was not appropriate and appears to simply be Petitioner's preference. Petitioner's testimony alone as to the need for an out-of-network provider is insufficient to establish that care by such a provider is medically necessary.

Based on the record, I find that the HMO and Department correctly denied the request for care by an out-of-network provider as lacking a showing of medical necessity.

**CONCLUSIONS OF LAW**

The HMO and Department properly denied Petitioner’s prior authorization request for care by Dr. Grace Janik, an out-of-network provider.

**THEREFORE, it is ORDERED**

That this 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, 4822 Madison Yards Way 5<sup>th</sup> Floor, 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.

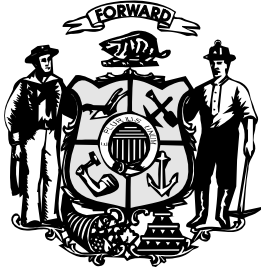
**APPEAL TO COURT**

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 5th day of January, 2023

\s \_\_\_\_\_  
Nicole Bjork  
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](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 5, 2023.

Division of Medicaid Services