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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MPA - 215583

PRELIMINARY RECITALS

Pursuant to a petition filed on October 23, 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 (DMS) regarding Medical Assistance (MA), a hearing was held on December 4, 2024, by telephone.

The issue for determination is whether DMS correctly denied Petitioner's prior authorization request for Wegovy (semaglutide).

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: Karen Lochemes, BSN RN
Division of Medicaid Services
PO Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Wendy I. Smith
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 37-year-old resident of Outagamie County who is eligible for MA.
2. On or about September 24, 2024, Petitioner's provider submitted a prior authorization (PA) request (PA# [REDACTED]) for the medication Wegovy (semaglutide). The PA request identified Petitioner's primary diagnosis as Obesity Due To Excess Calories (E66.09) and her secondary diagnosis as Body Mass Index (BMI) 33.0 – 33.9, Adult (Z68.33).
3. Petitioner's provider included the Prior Authorization Drug Attachment for Anti-Obesity Drugs with the PA request. At the time of completion, Petitioner had a Body Mass Index of 24.3, height of 67 inches, and weight of 155 pounds. Her stated goal weight is 145 pounds. The attachment states that Petitioner has no history of an eating disorder or substance abuse or misuse. Petitioner's provider has not determined if Petitioner has any medical or medication contraindications to treatment with an anti-obesity drug.
4. In a letter dated October 1, 2024, DMS informed Petitioner's provider that the PA request was denied for the following reason:

0138 – THE REQUESTED SERVICE(S) DOES NOT MEET FORWARDHEALTH GUIDELINES.
5. Petitioner was previously approved for Wegovy from June 12, 2023, through December 12, 2023 (PA# [REDACTED]), and December 14, 2023, through June 14, 2024 (PA# [REDACTED]).
6. Petitioner now appeals to the Division of Hearings and Appeals.

DISCUSSION

Prescription drugs that are deemed medically necessary by DMS can qualify as an MA-covered service. Wis. Stat. § 49.46(2)(b)(6)(h); Wis. Admin. Code DHS § 107.10(1). Drugs that entail substantial cost or utilization problems for the MA program, as determined by the Department of Health Services, require prior authorization. Wis. Admin. Code DHS § 107.10(2)(d). For any prior authorization request to be approved, the requested service must satisfy the criteria listed at Wis. Admin. Code DHS § 107.02(3)(e). Those criteria include the requirement that the service be medically necessary and appropriate. Wis. Admin. Code DHS § 107.02(3)(e)(1)-(2).

Further, the agency shall consider the effective and appropriate use of available services, as well as the cost-effectiveness of the service. *Id.* at subsec. (e)(3)-(7). In considering these factors, the agency is obligated to assess a requested service in light of the member's condition and in light of other available services that may be more appropriate to their condition, more cost effective, and more likely to result in long-term positive results.

Wegovy (semaglutide) belongs to a class of medications called anti-obesity drugs. Anti-obesity drugs are used along with improvements in diet and exercise to assist a person to lose weight. All drugs in this class require prior authorization from DMS. The agency's written policy concerning coverage of anti-obesity drugs states:

Clinical Criteria for Anti-Obesity Drugs

Clinical criteria for approval of a PA request for anti-obesity drugs **require one of the following:**

- The member is 18 years of age or older (or 12 years of age or older for Evekeo requests only) and has a BMI (body mass index) greater than or equal to 30.
- The member is 18 years of age or older (or 12 years of age or older for Evekeo requests only), has a BMI greater than or equal to 27 but less than 30 and has two or more of the following risk factors:
 - The member is currently being treated for dyslipidemia.
 - The member is currently being treated for hypertension.
 - The member is currently being treated for sleep apnea.
 - The member is currently being treated for type 2 diabetes mellitus.
 - The member has cardiovascular disease, which is supported by a history of at least one of the following:
 - Myocardial infarction (heart attack)
 - Coronary revascularization
 - Angina pectoris
 - Stroke
 - Intermittent claudication with an ABI (ankle brachial index) of less than or equal to 0.9
 - Peripheral arterial revascularization due to atherosclerotic disease
 - Amputation due to atherosclerotic disease

...

In addition, **all of the following must be true:**

- The member is not pregnant or nursing.
- The member does not have a history of an eating disorder (for example, anorexia, bulimia, or binge eating disorder).
- The prescriber has evaluated and determined that the member does not have any medical or medication contraindications to treatment with the anti-obesity drug being requested.
- For controlled substance anti-obesity drugs, the member does not have a medical history of substance abuse or misuse.
- The member has participated in a weight loss treatment plan (for example, nutritional counseling, an exercise regimen, or a calorie-restricted diet) in the past six months and will continue to follow the treatment plan while taking an anti-obesity drug.

PA requests for anti-obesity drugs will not be renewed if a member's BMI is below 24.

PA requests for anti-obesity drugs will only be approved for one anti-obesity drug per member. ForwardHealth does not cover treatment with more than one anti-obesity drug.

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Initial and Renewal PA Requests for Wegovy

If clinical criteria for anti-obesity drugs are met, initial PA requests for Wegovy will be approved for up to 180 days. If the member meets a weight loss goal of at least 5 percent of their weight from baseline, PA may be requested for an additional 180 days of treatment. Renewal PA requests require the member to be taking an appropriate maintenance dose, as

outlined in the Wegovy prescribing information. **PA requests for Wegovy may be approved for up to a maximum treatment period of 12 continuous months of drug therapy.**

If the member does not meet a weight loss goal of at least 5 percent of their weight from baseline during the initial 180-day approval or the member **has completed 12 months of continuous Wegovy treatment, then the member must wait six months before PA can be requested for Wegovy.**

ForwardHealth allows only two weight loss attempts with Wegovy during a member's lifetime. Additional PA requests will not be approved. ForwardHealth will return additional PA requests to the prescriber as noncovered services. Members do not have appeal rights for noncovered services.

...

Medicaid Provider Online Handbook (Provider Handbook) Topic #7837 (available at <https://www.forwardhealth.wi.gov/WIPortal/Subsystem/KW/Display.aspx>) (emphasis added).

In this matter, Petitioner's PA request was for a renewal of her Wegovy prescription, as she has been on the medication under two previously approved prior authorizations from June 2023 through June 2024. Petitioner appears to have been successful in losing weight while on Wegovy. At the hearing, Petitioner testified that she is concerned about regaining weight and the impact of potential weight gain on her mental health if her prior authorization is not immediately approved. Further, while Petitioner has explored obtaining an equivalent drug by paying for it out-of-pocket, she is concerned about using a syringe-injectable drug (as opposed to a Wegovy injection pen) with her past history of drug abuse. All of these are valid concerns of a patient with Petitioner's current condition and history.

DMS submitted a written record in advance of the hearing in this matter to further explain its denial. As Petitioner has completed 12 months of continuous Wegovy treatment, Petitioner must wait 6 months before another PA can be requested, per *Provider Handbook* Topic #7837. A new PA request for Wegovy may be submitted on or after December 14, 2024. Petitioner's prior approved usage of Wegovy for a year precludes her from seeking continued approval unless she meets the 6-month waiting period, as clearly specified in the *Provider Handbook*.

Based on the evidence before me, I must conclude that Petitioner does not meet the clinical criteria for coverage of Wegovy. While I understand her legitimate concerns with ceasing taking the medication for the required waiting period, and the difficulty in obtaining an equivalent drug through out-of-pocket purchase, I unfortunately do not have the authority to grant equitable relief from the required clinical criteria. Petitioner is encouraged to have her provider submit a new PA request once the required waiting period has elapsed so that the agency may assess her eligibility.

CONCLUSIONS OF LAW

DMS correctly denied Petitioner's PA request for Wegovy (semaglutide) as she did not satisfy the required clinical criteria.

THEREFORE, it is

ORDERED

That 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, 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.

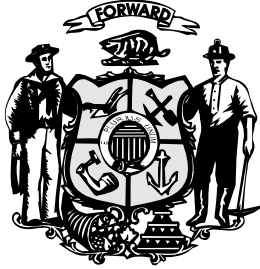
APPEAL TO COURT

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 9th day of December, 2024

\s _____
Wendy I. Smith
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 December 9, 2024.

Division of Medicaid Services