



FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MPP - 215826

PRELIMINARY RECITALS

Pursuant to a petition filed on November 7, 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 December 11, 2024, by telephone.

The issue for determination is whether Petitioner mis-utilized prescription services.

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: Katie Counts
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 Waukesha County.
2. On September 26, 2024, an agency representative reviewed Petitioner's pharmacy services between September 12, 2023, through September 3, 2024. Based on the review, the agency

representative determined that Petitioner's prescriptions of restricted medications were routinely refilled early.

3. On September 30, 2024, the agency sent Petitioner a notice informing him that he was going to be enrolled in the Lock-In program after a review of his drug or medical claims. The Lock-In program restricted Petitioner to one prescriber for restricted medications and one pharmacy when having those prescriptions filled.
4. The agency representative stipulated that Petitioner only used two pharmacies and that those pharmacies are in the same group and may reasonably be assumed coordinating care. Further, the agency stipulated that Petitioner only has three prescribers and that two of the three are from the same group, and again may reasonably be assumed to be coordinating care.
5. The agency representative testified that Petitioner's refill history includes early refills of all controlled substances by several days each month. The early refills over time put him ahead of schedule for all controlled substance medications. She testified that this is why they are seeking to enroll him in the Lock-In program. She further testified that neither the Petitioner nor his provider has modified this practice despite the agency sending out a Warning Letter. She further testified that health concerns could result from the overuse of the prescribed medications, though concern for health was not the basis for the determination. Rather, the determination was made to enroll Petitioner in the Lock-In program due to habitual early prescription refills.
6. The Warning Letter described by the agency was not submitted into evidence. Rather, the agency submitted the history of use by Petitioner as well as a copy of the letter notifying Petitioner that he was going to be enrolled in the Lock-In program.
7. There is no evidence that Petitioner was using the early drugs illegally or even outside his health regime.
8. Susan Merrick, a nurse case manager from [REDACTED], also testified. She noted that she reviewed Petitioner's prescription refill history at length and noted no issues in his refill pattern.
9. No evidence was submitted that Petitioner actually obtained the prescriptions on the refill dates.

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."

After reviewing the evidence and hearing from both sides, I conclude that the Lock-In program is not appropriate for Petitioner. Specifically, the agency has not convinced me that obtaining prescriptions early is

a misutilization of the program when there is no evidence or even an allegation that Petitioner is misusing the prescriptions. Further, since Petitioner has always used only two pharmacies under the same system, which the agency admitted means we can reasonably assume they are working in tandem, I fail to see how putting him in the Lock-In program will resolve the issue of early prescription filling. It is evident to me that if there is a problem here, it is with the pharmacy. Pharmacy records should make evident that prescriptions are being filled too early, and the pharmacy could then alter the refill date. If the pharmacy has been filling prescriptions too early all along, I fail to see how locking Petitioner into that pharmacy will solve the problem.

Katie Counts, the agency pharmacist consultant, explained that her office can monitor Petitioner's usage in the lock-in program, but I fail to see why his usage cannot be monitored outside the lock-in program. I also fail to see why this issue cannot be resolved by telling the pharmacy to pay closer attention to the refill dates. Further, while Ms. Counts stated that a warning letter was sent, there is no evidence where this warning letter was sent or when. Petitioner testified that he was unaware of this letter. The evidence does establish that his records were reviewed on September 26, 2024 and that a determination to enroll him into the Lock-In program was made only days later, on September 30, 2024. Thus, even if a Warning Letter was sent after the review, there wasn't time to even implement any changes. Finally, the fact that a more closely watched regime might be healthier for Petitioner is not a factor in the lock-in determination.

CONCLUSIONS OF LAW

Putting Petitioner in the MA Lock-In program is inappropriate because it has not been shown that he is mis-utilizing prescription services by filling prescriptions early.

THEREFORE, it is

ORDERED

That the matter be remanded to the DMS with instructions to rescind Petitioner's placement in the MA lock-in program, within 10 days of this decision.

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

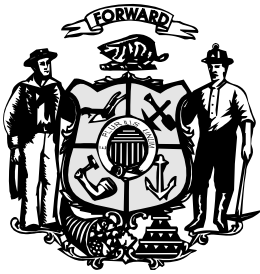
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 16th day of January, 2025

\s _____
Nicole Bjork
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 16, 2025.

Division of Medicaid Services