



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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December 26, 2025

[REDACTED]
[REDACTED]
[REDACTED]

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

RE: [REDACTED]
Case No. HMO - 220155

Dear Parties:

Enclosed is a copy of the Final Decision in the above-referenced matter.

Sincerely,

[REDACTED]

Shannon Buboltz
Legal Associate Supervisor

c: Division of Medicaid Services - email
DHS MC Appeals - email
Attorney Tim Hennigan - email



STATE OF WISCONSIN
DEPARTMENT OF HEALTH SERVICES

In the Matter of

DECISION

HMO-220155

The attached proposed decision of the Administrative Law Judge dated November 20, 2025 is hereby adopted as the final order of the Department.

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, Madison, WI 53705-9100 **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 State of Wisconsin Department of Health Services, 201 E. Washington Avenue, Rm E200B, PO Box 7850, Madison, WI 54703, **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 request (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 26th day
of December, 2025.

K [Signature]
Department of Health Services



FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



PROPOSED DECISION
Case #: HMO - 220155

PRELIMINARY RECITALS

Pursuant to a petition filed September 25, 2025, under Wis. Stat., §49.45(5)(a), to review a decision by the Division of Medicaid Services (DMS) regarding Medical Assistance (MA), a hearing was held on November 12, continued to November 17, 2025, by telephone.

The issue for determination is whether the Division of Hearings and Appeals can review a finding that a service is experimental.

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:

Atty. Tim Hennigan
ABC For Health, Inc.
32 N Bassett St.
Madison, WI 53703

Respondent:

Department of Health Services
201 E. Washington Ave.
Madison, WI 53703

By: Written submission of Dr. Steven Tyska
Division of Medicaid Services
PO Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Ashland County who is eligible for MA with GHC of Eau Claire as her HMO.

2. On July 31, 2025, [REDACTED] of [REDACTED] requested prior authorization for an Occipital Nerve Block to treat chronic headaches and migraines (diagnoses include both intractable migraine and chronic tension-type headache – see page 28 of the HMO submission).
3. By a notice dated August 1, 2025, the HMO denied the request because the procedure is experimental/investigational due to limited scientific evidence or research studies to support its use in clinical practice.
4. Petitioner filed a grievance. By a notice dated August 19, 2025, the HMO affirmed its decision. Petitioner apparently did not receive the notice; in her appeal she states that the HMO ignored her grievance request. Nevertheless, she filed a timely appeal with the Division of Hearings and Appeals.
5. While the appeal was pending the Department’s Medical Consultant reviewed the request and affirmed the denial, citing the lack of evidence that the treatment is effective.

DISCUSSION

Under the discretion allowed by Wis. Stat., §49.45(9), the Department now requires MA recipients to participate in HMOs. Wis. Admin. Code, §DHS 104.05(2)(a). MA recipients enrolled in HMOs must receive medical services from the HMOs’ providers, except for referrals or emergencies. Admin. Code, §DHS 104.05(3).

The criteria for approval by a managed care program contracted with the DMS are the same as the general MA criteria. See Admin. Code, §DHS 104.05(3), which states that HMO enrollees shall obtain services “paid for by MA” from the HMO’s providers. The department must contract with the HMO concerning the specifics of the plan and coverage. Admin. Code, §DHS 104.05(1).

If the enrollee disagrees with any aspect of service delivery provided or arranged by the HMO, the recipient must file a grievance with the HMO. If the HMO denies the grievance, the recipient can appeal the HMO’s denial within 90 days. Wis. Stat., §49.45(5)(ag).

Under Wis. Admin. Code, §DHS 107.035, certain services are excluded from MA coverage if, after a departmental review, they are determined to be experimental. Wis. Admin. Code, §DHS 107.03(4), provides that services considered experimental are not covered services. In this case the department has concluded that the Occipital Nerve Block procedure is not proven to be an effective treatment. See the Forward Health Physician Handbook, Topic 567: “A service is considered experimental when Wisconsin Medicaid determines that the procedure or service is not an effective or proven treatment for the condition for which it is intended.” This topic is found in the ForwardHealth Physician Handbook online at www.forwardhealth.wi.gov/WIPortal/Subsystem/KW/Display.aspx?ia=1&p=1&sa=50&s=2&c=8&nt=Experimental+Services.

I find no authority for the Division of Hearings and Appeals to reverse the department’s conclusion that a service is experimental or of unproven medical value. Nothing in §DHS 107.035 suggests that the department’s determination that a procedure is experimental is appealable to the Division of Hearings and Appeals. Since the Division of Hearings and Appeals is required to follow Department policy unless it clearly is contradicted by federal or state law, I must follow the Department’s policy. The code makes clear that if a service is determined to be experimental, it is not covered by MA. Thus the issue before me is whether this requested service is one that has been deemed to be experimental. The answer is that it is such a service, and thus I must conclude that it is not covered by MA unless and until the Department deems the service to be covered.

It is true that there have been Division of Hearings and Appeals decisions in the past that have addressed the finding of whether a service is experimental. However, more recently in attempting to be consistent, the Division has taken the position that I have adopted. An administrative law judge has neither the authority nor the expertise to parse through medical studies to determine the correctness of the Department's conclusion. Further, if an administrative law judge were to have such authority, there would be no approval standards in place to review because the Department has not drafted such standards.

Petitioner asserts that Medicare covers the procedure. Dr. Lepak of GHC testified that Medicare covers the procedure for diagnostic purposes, not for treatment.

Finally, petitioner notes that the HMO includes that procedure on its list of services that require prior authorization, asserting that it would not do so unless there was potential coverage. Based on the HMO response, I read the prior authorization requirement as a means of preventing physicians from providing a potentially uncovered service.

CONCLUSIONS OF LAW

1. The Division of Hearings and Appeals does not have authority to review the Department's finding that a requested medical service is experimental.
2. The HMO correctly denied prior authorization of the requested medical procedure because it is not a covered service.

THEREFORE, it is

ORDERED

That the petition for review is hereby dismissed.

NOTICE TO RECIPIENTS OF THIS DECISION:

This is a Proposed Decision of the Division of Hearings and Appeals. IT IS NOT A FINAL DECISION AND SHOULD NOT BE IMPLEMENTED AS SUCH.

If you wish to comment or object to this Proposed Decision, you may do so in writing. It is requested that you briefly state the reasons and authorities for each objection together with any argument you would like to make. Send your comments and objections to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy to the other parties named in the original decision as "PARTIES IN INTEREST."

All comments and objections must be received no later than 15 days after the date of this decision. Following completion of the 15-day comment period, the entire hearing record together with the Proposed Decision and the parties' objections and argument will be referred to the Secretary of the Department of Children and Families for final decision-making.

The process relating to Proposed Decision is described in Wis. Stat. § 227.46(2).

Given under my hand at the City of Madison,
Wisconsin, this 20th day of November, 2025

A large black rectangular redaction box covering the signature and name of the Administrative Law Judge.

Administrative Law Judge
Division of Hearings and Appeals