STATE OF WISCONSIN

In the Matter of

(petitioner)

DECISION

MPA-38/74722

REMAND OF PROPOSED DECISION

This matter is remanded to the Administrative Law Judge (ALJ) for the purpose of remanding this back to the Division of Health Care Financing (DHCF) because it is unclear from the materials in the case file, including the letter from Dr. Carr, whether or not the DHCF determined that the procedure was experimental or whether prior authorization was required, and if so, whether or not it should have been granted.

NOW, THEREFORE, it is **ORDERED**

That the Administrative Law Judge (ALJ) remand this back to the Division of Health Care Financing (DHCF) for a determination whether:

(a) the procedure in question is experimental as defined in and applying the review criteria under HFS 107.035, in which case DHCF may deny coverage; or
(b) the procedure is one DHCF has determined requires prior authorization under the criteria set forth in HFS 107.02(3)(b), in which case DHCF must determine whether to issue prior authorization based on the review criteria set forth in HFS 107.02(3)(e); or
(c) neither (a) nor (b) applies, in which case DHCF must cover the service.

Given under my hand at the City of Madison, Wisconsin, this 26th day of May, 2006.

/s

Susan J. Reinardy, Deputy Secretary
Department of Health and Family Services

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)

PROPOSED DECISION

MPA-38/74722

PRELIMINARY RECITALS

Pursuant to a petition filed January 24, 2006, under Wis. Stat. §49.45(5), to review a decision by the Division of Health Care Financing (DHCF) to deny Medical Assistance (MA) authorization for artificial disk replacement surgery, a hearing was held on March 22, 2006, at Marinette, Wisconsin.

The issue for determination is whether the requested surgery was properly denied by MA.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

(petitioner)

Wisconsin Department of Health and Family Services
Division of Health Care Financing
1 West Wilson Street, Room 250
P.O. Box 309
Madison, WI 53707-0309
By: Written submission of Richard M. Carr, M.D.

ADMINISTRATIVE LAW JUDGE:
Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN xxx-xx-xxxx) is a resident of Marinette County.
2. On December 8, 2005, Richard Harrison, M.D., requested prior authorization for artificial disc replacement surgery on petitioner's behalf, PA no. 2102944. By a letter dated December 23, 2005, the DHCF denied the request because such surgery is not covered by MA.
3. "Total disc arthroplasty" is listed as a non-covered service by the Wisconsin MA program. See the department's website at http://dhfs.wisconsin.gov/medicaid4/maxfees/txt/max15_physician_01.txt.
4. Petitioner had a herniated disc at the L5-S1 disc space. She had been treated for the problem since at least early 2004. She underwent a microdiskectomy on November 8, 2004, but it did not resolve the problem. Her doctor prescribed the disc replacement surgery as being less invasive than a fusion surgery.

DISCUSSION

The department may reimburse providers only for medically necessary and appropriate health care services and equipment listed in Wis. Stat., §§49.46(2) and 49.47(6)(a), as implemented by Wis. Adm. Code, Ch. HFS 107. Some services and equipment are covered only when listed guidelines are met. Some services and equipment are covered if a prior authorization request is submitted and approved by the Division in advance of receiving the service. Finally, some services and equipment are never covered by the MA program.

As pointed out by petitioner's doctor in the prior authorization request, artificial disc replacement, also called arthroplasty, was given a CPT code of 0091T effective January 1, 2005. The code apparently is specifically for the "CHARITE" artificial disc surgical procedure. Dr. Harrison notes in his December 6, 2005 letter to the DHCF that Procedure Code 22899 for unlisted spinal procedures might also be used. It was that code that was used in this prior authorization request, but it is clear that the service was the arthroplasty described in Code 0091T.

The department, in its list of services found at the above cited website, specifically denotes that code 0091T is not covered by Wisconsin MA. For that reason the DHCF denied the requested surgery. There is no reason given for the blanket denial, and Dr. Carr did not offer a reason for the blanket denial.

Dr. Harrison went ahead with the surgery after the denial. Petitioner reports that her back is pain-free for the first time in several years.

Covered physician services are "any medically necessary diagnostic, preventive, therapeutic, rehabilitative or palliative services … by a physician" in conformity with generally accepted good medical practice, except as limited within Chapter 107 of the Wisconsin Administrative Code. Wis. Adm. Code, §HFS 107.06(1). There is no limitation for artificial or other disc surgery within §HFS 107.06. Experimental services are not covered by MA. Wis. Adm. Code, §HFS 107.035. However, this particular surgery is not noted to be experimental either in department policy or by Dr. Carr. Furthermore, Dr. Harrison's December 6, 2005 letter sent with the prior authorization request asserts that the artificial disc is approved by the Food and Drug Administration. He asserts that the surgery is less invasive than traditional fusion surgery leaving the patient with fewer limitations. Petitioner testified that since undergoing the surgery she has had no pain or restrictions in her lower back.

I conclude that the department cannot simply deny all coverage of a medical procedure by fiat. There is no restriction in the administrative code on this procedure, and the DHCF does not asset that it is experimental. On the other hand, petitioner's evidence shows that the procedure was medically necessary and successful. I thus will order that the surgery in petitioner's case can be authorized for payment by MA.

CONCLUSIONS OF LAW

1. The requested artificial disc surgery for petitioner was medically necessary and within accepted medical practice.
2. The department cannot deny coverage of a service by policy alone without providing a legal basis for the restriction.

NOW, THEREFORE, it is **ORDERED**

That Richard Harrison, M.D. is hereby authorized to provide the disc arthroplasty service requested in PA no. 2102944, and he may submit his claim, along with a copy of this decision, to EDS-Federal Corporation for payment.

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 IMPLMENTED 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 Health and Family Services 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 12th day of April, 2006.

/s

Brian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals
0407/bcs