



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████████
██████████
██████████
██████████

DECISION
Case #: HMO - 221160

PRELIMINARY RECITALS

Pursuant to a petition filed December 15, 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 January 14, 2026, by telephone.

The issue for determination is whether petitioner meets the criteria for continued use of a CPAP machine.

PARTIES IN INTEREST:

Petitioner:

██████████
██████████
██████████
██████████

Respondent:

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

By: Written submission of Steven Tyska, MD
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 17-year-old resident of Washburn County who is eligible for MA.
2. In May, 2025, petitioner was diagnosed with mild obstructive sleep apnea. A 90-day trial with a CPAP machine was ordered.

3. In the last month of the trial petitioner used the machine on 63% of the nights but for at least four hours only 47% of the nights. Usage was similar or less in the first two months.
4. By letters dated October 16 and 21, 2025, the HMO informed petitioner that continued use of the CPAP machine was denied. Petitioner sought a grievance, but the committee upheld the denial on November 18, 2025. After this appeal was filed, the DMS consultant reviewed the records and also upheld the denial.

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).

The DMS may only reimburse providers 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 the Wisconsin Administrative Code, chapter DHS 107.

The DMS requires, for approval of a CPAP machine, a sleep study to be done to determine medical necessity. Prior Authorization Guideline Manual, Topic 1863. The DMS follows the Centers for Medicare and Medicaid Services (CMS) requirement that a person must use the device at least four hours per night on 70% of nights during a consecutive 30-day period within the first three months of usage. See DMS case summary dated December 29, 2025, page 1.

Here petitioner failed to use the CPAP machine the requisite 70% of nights during any 30-day period of her three-month trial. In fact, in none of the three months did she come even close to 70%. Petitioner's mother testified that petitioner was traveling during the summer, and that she had trouble getting used to the CPAP mask. However, the final 30 days of the testing were September 12 to October 11, 2025, when petitioner was back in school, so she was not traveling then.

That said, the Division of Hearings and Appeals has not been given authority by the DMS to make an exception, good cause or other, to the policy. Since the Department policy is that continued use of a CPAP must be denied if the usage rate does not meet the standards, I must affirm the denial.

CONCLUSIONS OF LAW

The agency correctly discontinued coverage of a CPAP machine for petitioner because she did not use it enough to meet the standard for continued coverage.

THEREFORE, it is

ORDERED

That the petition for review is hereby 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.

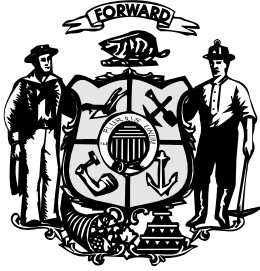
APPEAL TO COURT

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, 201 E. Washington Ave., **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 Madison,
Wisconsin, this 16th day of January, 2026

\s _____
Brian C. Schneider
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, 2026.

Division of Medicaid Services
DHS MC Appeals