



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

DECISION

MPA/169310

PRELIMINARY RECITALS

Pursuant to a petition filed October 07, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability (DHCAA) in regard to Medical Assistance, a telephonic hearing was held on December 02, 2015, at Janesville, Wisconsin. At the request of petitioner, a hearing set for November 18, 2015 was rescheduled. At the request of petitioner, the record was held open for the submission of new evidence and a written closing argument to DHCAA and DHA, and then a Reconsideration summary by DHCAA to petitioner and DHA. The parties timely submitted their closing arguments to DHA which are received into the hearing record.

The issue for determination is whether the Department correctly denied the prior authorization (PA) request of Child/Adolescent Day Treatment (CADT) charges of \$48,501, due to provider's failure to timely provide required documentation for the period from August 3, 2015 to November 3, 2015.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
[Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

Representative:

[Redacted] case manager
[Redacted]
[Redacted]
[Redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [Redacted] nurse consultant
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 10 year old resident of Rock County (Janesville area) who resides with his mother, [REDACTED] and his siblings.
2. The petitioner has been enrolled in Wisconsin Medicaid since November, 2013.
3. The petitioner is diagnosed with Attention Deficit with Hyperactivity Disorder (ADHD) and has a “provisional” diagnosis that has not been confirmed by any psychiatrist or mental health expert as of the hearing date (Autism Spectrum Disorder).
4. The petitioner does have behavioral issues and some history of angry outbursts both at school and at home. The petitioner was physically aggressive with one teacher at school. He generally feels anxious at school, but is doing fairly well academically. He struggles to maintain his attention, and often shifts from one uncompleted task to another. At home, petitioner struggles with following his mother’s directions, and following through with specific tasks. At times, he will become angry with his siblings, and begin to be physically aggressive.
5. In the past, petitioner was prescribed Risperdal, Ritalin, and Vyvanse, but the record appeared to indicate he was not taking any of those medications during the period of the hearing.
6. The petitioner’s representative was unable to provide any reliable documentation of any police involvement with petitioner due to emotional or physical disturbance, no emergency room visits due to urgent emotional disturbance, no serious injury resulting from the petitioner emotional outbursts or disturbances, and no consultations contact with a psychiatrist to confirm diagnoses or to treat the petitioner’s emotional problems.
7. On or about August 4, 2015, petitioner’s provider, [REDACTED], submitted a prior authorization (PA) request to DHCA on behalf of the petitioner for 13 weeks of Child/Adolescent Day Treatment (CADT) services about five hours a day, five days a week for the period of August 3, 2015 to November 3, 2015 at a cost of \$48,501.00 with a requested start date of August 3, 2015.
8. The provided failed to submit with its PA to DHCAA all the required documentation until September 15, 2015, about six (6) weeks after the provider began petitioner’s CADT treatment on August 3, 2015.
9. The Department sent a September 22, 2015 notice to the petitioner denying the petitioner’s PA request for CADT services due to: a) lack of documented medical necessity for CADT services; b) other less expensive and appropriate services are available which may safely and effectively meet the member’s medical needs; c) the provider did not establish that CADT is the most appropriate medical treatment service for the petitioner.
10. Despite the CADT denial, the provider, [REDACTED], continued to provide CADT services for the petitioner from September 22, 2015 until about November 3, 2015.
11. OIG consultant, [REDACTED], sent a September 15, 2015 summary letter to DHA and to petitioner which provided the following reasons for the denial of the PA for CADT services: a) the provider failed to establish the medical necessity of the requested CADT services; b) the provider did not timely document or establish that the CADT services were cost effective compared to alternative services reasonably accessible to the petitioner, or that the CADT services were the most appropriate services that can safely and effectively be provided for petitioner; c) the provider’s documentation failed to substantiate the member meets all policy and coverage criteria which include the requirement that the services are consistent with the member’s signs and symptoms, and treatment of a valid, diagnosed mental disorder; d) the provider failed to establish that petitioner’s medically necessary health care services are not coverable as HealthCheck “Other services;” e) the provider failed to timely justify the clinical

rationale for CADT services, a mental health services, as opposed to autism treatment; f) it is the provider's duty to justify the provision of CADT services with reliable documentation and the provider failed to do so; g) the provider failed to establish with reliable, timely documentation that the petitioner's signs and symptom and treatment of a valid, diagnosed mental disorder met the Department's criteria to authorize the requested CADT treatment.

12. While the record was held open, the petitioner's representative and provider submitted some new evidence and closing argument to DHCAA for a Reconsideration summary to DHA and to petitioner. See Preliminary Recitals above.
13. The DHCAA mental health consultant, [REDACTED], sent a detailed, December 4, 2015 Reconsideration summary to the petitioner's mother, Ms. [REDACTED] and to DHA which established the following reasons for the continued denial of reimbursement for the CADT services provided to petitioner: a) the provider failed to timely submit the required prior authorization and required documentation to OIG **prior** to the August 3, 2015 start of CADT services for petitioner; b) the provider failed to establish with reliable evidence that petitioner required or received any emergency or urgent mental health services; c) the provider failed to establish that petitioner met criteria to be eligible for coverage of CADT, a Health Check services; d) the provider failed to timely complete new testing or evaluation necessary for the development of an effective treatment plan prior to the provision of the CADT services; e) services are non-reimbursable under the MA program unless the documentation requirement is met per DHS 106.02(9)(f), Wis. Admin Code; f) the provider failed to submit the differential diagnostic evaluation, required to be performed **prior** to providing CADT services, documenting the signs and symptom and correlating these to potential diagnoses, and discussing the reasons for and against potential diagnoses; g) the provider failed to submit a thorough, comprehensive, initial multidisciplinary assessment, including any new test or evaluation necessary for the development of an effective CADT treatment plan; h) the provider failed to establish that the requested CADT services were cost-effective as compared to alternative services; i) provider failed to establish CADT services to be the most appropriate and cost effective service that can safely and effectively be provided for the petitioner; and j) the PA in this case must be denied because the documentation for the PA request is incomplete and medical necessity criteria have not been met.

DISCUSSION

The petitioner and his provider, [REDACTED], seek reimbursement for 13 weeks of Child/Adolescent Day Treatment (CADT) Services about five hours a day, five days a week at a cost of \$48,501.00 during the period of August 3, 2015 to November 3, 2015. The Office of Inspector General (OIG) denied the request for a variety of reasons, including that the services were provided before the request was made and proper, complete documentation was submitted, and the requested CADT was not established to be cost effective, appropriate or medically necessary.

The Office of Inspector General indicates that this is a "HealthCheck—Other Service" covered under Wis. Admin. Code, § DHS 107.22(4), a catch-all category applying to any service described in the definition of "medical assistance" found at 42 USC 1396d(a). Day treatment mental health services for children under 18 are more specifically covered by Wis. Admin. Code, Chapter DHS 40. To qualify for services, a child "must have a primary psychiatry diagnosis of mental illness or severe emotional disorder." Wis. Admin. Code, § DHS 40.08(3)(a). "Mental illness" is defined as a "medically diagnosable mental health disorder which is severe in degree and which substantially diminishes a child's ability to carry out activities of daily living appropriate for the child's age." Wis. Admin. Code, § DHS 40.03(16). Each child is evaluated by a psychologist or psychiatrist and has a treatment plan approved by a program. Wis. Admin. Code, §§ DHS 40.08(4) and 40.09(2)(c). Like any medical assistance service, it must be **medically necessary, cost-effective, and an effective and appropriate** use of available services. It must

also meet the "limitations imposed by pertinent...state...interpretations." Wis. Admin. Code § DHS 107.02(3)(e)1.,2.,3.,6., 7, and 9. Wis. Admin. Code.

"Medically necessary" is defined in Wis. Admin. Code § DHS 101.03(96m) as a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. HFS 107.035, is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;
 7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

██████████ requested 13 weeks of CADT services for the petitioner at a cost of \$48,501 on or about August 4, 2015 before provider submitted timely the required, complete PA documentation to the Department. See Findings of Fact #6 - #11 above.

Wis. Admin. Code, § DHS 107.02(3)(c) states: "If prior authorization is not requested and obtained **before** a service requiring prior authorization is provided, reimbursement shall not be made except in extraordinary circumstances such as emergency cases where the department has given verbal authorization for a service." This rule is not absolute. Wis. Admin. Code, § DHS 106.03(4)(a), which is found in the chapter in the administrative code pertaining to the provider's rights and responsibilities, allows an exception to this general rule "[w]here the provider's initial request for prior authorization was denied and the denial was either rescinded in writing by the department or overruled by an administrative or judicial order." In this case, petitioner's provider did not timely submit its PA for petitioner, and did not obtain timely verbal authorization for CADT services for petitioner.

This rule is needed because it can often take weeks or months for the Division to review requests for needed therapy. This especially creates problems if the request is for continuing or follow-up services and the lack of approval can interrupt ongoing treatment. But the preferred method is for the Office to review the request before services begin because it, unlike the Division of Hearings and Appeals, has medical training in the area under review that allows it to provide an expert opinion on whether the service is necessary. When reviewing a matter in which the services begin before being approved, Hearings and Appeals must look at all of the circumstances of the case.

The petitioner and his provider have the burden of proving that the requested services are medically necessary and cost-effective. By receiving therapy from ██████████ one day before even submitting the August 4, 2015 incomplete PA request, the provider prevented the Division from adequately determining whether those services were medically necessary and cost-effective when compared to other potentially available services. Although ██████████ has significant problems, neither the

evidence in the file nor the testimony at the hearing established that waiting a several weeks for the Division to review his matter to determine whether the requested services were medically necessary and cost-effective would have significantly hindered his recovery. Therefore, the exception in Wis. Adm. Code, § DHS 107.02(3)(c) to the general rule that recipients must obtain prior authorization before receiving services does not apply.

See also other DHA decisions where CADT providers that have begun CADT services before submitting a complete prior authorization request. *See DHA Decision Nos. MPA 58/10823, MPA/35/139624, MPA/142947, MPA/142933, MPA/143218, and MPA/147603.* In those appeals, the Department was found to have correctly denied those CADT PA requests. Moreover, even if the request had been filed on time, the petitioner has not met his burden of showing that this CADT PA request is cost-effective, appropriate, and medically necessary treatment.

During the December 2, 2015 hearing, neither the petitioner's representative (██████████) nor any of the petitioner's witnesses were able to present any specific, reliable testimony or evidence to refute the Departmental reasons for denial of the CADT request, as indicated in Findings of Fact #11 and #13 above. Instead, the testimony of both Ms. ██████████ and the other witnesses were rather vague and lacking in sufficient specificity to be reliable or persuasive. Neither Ms. ██████████ nor his mother were able to refute with any convincing evidence that OIG incorrectly denied the petitioner's PA request. Accordingly, for the above reasons, I conclude that the Department correctly denied the petitioner's August 4, 2015 prior authorization (PA) request for Child/Adolescent Day treatment (CADT) during the period of August 3, 2015 to November 3, 2015, by the provider, ██████████, because the provider failed to establish with timely, complete and reliable documentation that CADT services were appropriate, cost effective and medically necessary for the petitioner.

CONCLUSIONS OF LAW

The Department correctly denied the petitioner's August 4, 2015 prior authorization (PA) request for Child/Adolescent Day treatment (CADT) during the period of August 3, 2015 to November 3, 2015, by the provider, ██████████, because the provider failed to establish with timely, complete and reliable documentation that CADT services were appropriate, cost effective and medically necessary for the petitioner.

THEREFORE, it is

ORDERED

The petition for review herein be and the same 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, 5005 University Avenue, Suite 201, 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, Madison, Wisconsin 53703, **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 10th day of March, 2016.

\sGary M. Wolkstein
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 March 10, 2016.

Division of Health Care Access and Accountability