



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of

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

DECISION

MPA/169456

**PRELIMINARY RECITALS**

Pursuant to a petition filed October 13, 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 or Division) in regard to Medical Assistance (MA), a hearing was held on January 20, 2016, by telephone. Hearings set for November 8, 2015 and December 16, 2015, were rescheduled at the petitioner's request.

The issue for determination is whether the Division correctly denied a prior authorization request for speech and language therapy (SLT) for the petitioner.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

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

Petitioner's Representative:

Attorney [Redacted]  
[Redacted]  
[Redacted]

Respondent:

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

By written submission of [Redacted] MA CC-SLP  
Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Marathon County. She is certified for MA.

2. On August 26, 2015, a prior authorization request (#.. [REDACTED]) was submitted on the petitioner's behalf for SLT services. Services were requested at the level of once weekly, for 12 weeks, beginning September 9, 2015. Following a re-submission, the Division issued written notice of denial of the request on September 9, 2015.
3. The Division's basis for denial of the requested service was that the petitioner receives sufficient SLT services through her school to meet her needs.
4. The petitioner, age 3 ½, lives in a private residence with her parents and siblings. Her diagnoses include Symbolic Dysfunction and Mixed Language Disorder, global apraxia, metopic syntosis, reactive airway disease, craniosynostosis, trigonocephaly, Char Syndrome, Patent Ductus Ateriosis, and AUTS2 genetic condition. She participated in the Birth to Three program, where she briefly worked with a speech therapist before switching to the current provider. The child has been authorized for and received SLT once per week (60 minute sessions) from January 2014 through September 2015 from her current provider, [REDACTED] ([REDACTED]). In January 2014, the child's SLT goals involved using gestures to communicate, vocalizing, and comprehending play partners' actions. She met those goals by December 2014. Subsequently, she developed the ability to state at least four spoken words.
5. The provider's services have and will include parent coaching for extensive home follow-up. The private provider's goals on the disputed prior authorization request are as follows:
  1. *J will use gestures to make requests/indicate needs without prompts including: more, done, help 5 times a session for ¾ sessions.*
  2. *J will imitate/produce /m/ or /b/ as part of a CV or duplicated CVCV pattern 15 times each for ¾ sessions.*
  3. *J will imitate duplicated CV productions for alveolars /t,d,n/ at least 10 times each for ¾ sessions .*
  4. *J will imitate animal and environmental sounds 7-8 times a session for ¾ sessions.*
  5. *J will point to pictured objects and actions 6 times during a session for ¾ sessions.*
  6. *J will complete a two-step related sequence as modeled or requested 3 times a session for ¾ sessions.*
6. The petitioner also receives SLT at her school during the school year. The school's SLT goals are as follows:
  1. J will improve motor planning/programming skills for speech production by imitation phoneme shapes (i.e., CV, VC, reduplicated CVCV) for bilabial phonemes /p,b,m, w/ with a cumulative accuracy of 80% for any given target during structured activities when given visual verbal and tactile cues.
  2. J will improve motor planning/programming skills for speech production by imitation phoneme shapes (i.e., CV, VC, reduplicated CVCV) for alveolar phonemes /t,d,n/ with a cumulative accuracy of 80% for any given target during structured activities when given visual verbal and tactile cues.
  3. J will improve motor planning/programming skills for speech production by imitation phoneme shapes (i.e., CV, VC, reduplicated CVCV) for glottal phoneme /h/ with a cumulative accuracy of 80% for any given target during structured activities when given visual verbal and tactile cues.
  4. J will improve motor planning/programming skills for speech production by increasing accuracy of production of core functional vocabulary (i.e. words identified from home and school settings) with a cumulative accuracy of 70% for any given target during structured activities when given visual, verbal and tactile cues.
  5. J will protest "no" by using verbalizations, signs and/or picture symbols 75% of opportunities when given visual and verbal prompts and cues.

6. J will make requests and indicate choices by using verbalizations/words or augmentative/alternative communication (i.e., speech generating device/app, sign language) 70% of opportunities given visual cues and verbal prompts.

School therapy is provided for 30 minutes, twice weekly, three weeks out of four, and includes no parent coaching. The requesting provider regularly provides parent coaching for a home program.

7. The petitioner's provider therapist has adequately coordinated her efforts with the school's speech therapist.

### DISCUSSION

Speech and language therapy (SLT), as defined at Wis. Admin. Code §DHS 107.18(1), is an MA-covered service, subject to prior authorization after the first 35 treatment days. Wis. Admin. Code §DHS 107.18(2). In determining whether to approve such a therapy request, the Division employs the generic prior authorization criteria found at §DHS 107.02(3)(e). Those criteria include the requirements that a service be a medical necessity, appropriate, and an effective use of available services. *Id.* The Division argues that the authorization criteria have not been satisfied for the reason given in Finding #3 above. In the absence of evidence to the contrary, I will assume that the therapist intended to spend equal amounts of time on all unmet goals herein. The burden of proof, which is the preponderance of the credible evidence, rests with the petitioner because she is requesting a new round of services.

The Division argued that the petitioner receives SLT services through her school, so there is not a need for the requested therapy, as there are other available services that can be effectively and appropriately used. *See*, §DHS 107.02(3)(e)7. This generic standard for service approval is sometimes "short-handed" to a test of "duplication" of services. However, exact duplication of goals is not what is required by this standard. Rather, this reviewing standard causes the reader to consider whether, if the patient is taking advantage of available, appropriate services offered in other venues, the requested private therapy is still needed. In this case, the provider's Goals #1, #4, #5, and #6 are *not* duplicated by the school's goals. The provider's Goal #2 *is* duplicated by the petitioner's school SLT therapy goal "1" (relating to production of /m/ and /b/). Similarly, the provider's Goal #3 is duplicated by the petitioner's school therapy goal "2" (relating to production of /t, d, n/). The fact that the two therapists may use slightly different methods to get the child to produce these consonants is not enough to conclude that the school isn't providing this "consonant-making" service.

The petitioner also argues that because an audiologist organization recommends that a child with severe speech apraxia receive therapy three to four times weekly, she should receive weekly provider service in addition to the school services, even if the treatment goals overlap. The Division persuasively notes that during the several years of private provider therapy, which was successful, the provider's professional judgment apparently was that once weekly intervention was sufficient (the provider asked for and received approval for once weekly service). It is only now that the child is also getting school services that the provider is arguing that intervention is needed more than *twice* weekly. That is not persuasive.

To conclude, MA-paid therapy is not additionally needed for the petitioner for Goals #2 and #3, but is permissible for Goals #1 and #4 - #6. Because these four permissible, private goals constitute 66% of the requested (6) private goals, I will authorize 66% of the requested sessions (*i.e.*, 8 sessions).

*[Note to Petitioner: Your provider will not receive a copy of this Decision. In order to have the service requested here, you must provide a copy of this Decision to [REDACTED]. The provider must then submit a new prior authorization request to receive the approved service.]*

### CONCLUSIONS OF LAW

1. The petitioner does not require additional MA-paid SLT for Goals #2 and #3, because she is receiving appropriate treatment to reach those goals through the use of her school SLT services.
2. The petitioner may appropriately be given additional SLT for the provider's goals #1 and #4 through #6, for the period beginning September 9, 2015.

**NOW, THEREFORE, it is**

**ORDERED**

That [REDACTED] is hereby authorized to provide the petitioner with **8** of the requested speech and language therapy sessions and to submit its claim, along with a copy of this Decision and a new prior authorization request, to ForwardHealth for payment. In all other respects, the petition is 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

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\sNancy J. Gagnon  
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

Attorney [REDACTED] [REDACTED]