



**STATE OF WISCONSIN  
Division of Hearings and Appeals**

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/169713

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed October 28, 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 in regard to Medical Assistance, a hearing was held on December 10, 2015, at Elkhorn, Wisconsin.

The issue for determination is whether evidence has been submitted on behalf of Petitioner that is sufficient to demonstrate that a denial of a prior authorization request for a speech language therapy (SLT) may be reversed.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

█  
█  
█

Respondent:

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

By: written submission of Laura Triller, Medicaid CCC SLP

OIG  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Walworth County.

2. A prior authorization (PA) request seeking speech language therapy (SLT) for Petitioner was filed by provider, [REDACTED], on or about August 18, 2015. That PA sought Medicaid payment for 24 SLT sessions at a frequency of once per week commencing September 5, 2015. The cost was noted to be \$6312.00.
3. Petitioner is 5 years of age ([REDACTED]). She does attend 5K, 5 days per week for the full school day. Some SLT is provided in school. She uses an iPad as an augmented communication device.
4. The PA forms indicate that Petitioner has a diagnosis of developmental delay - unspecified and dysarthria. She has good receptive language skills but verbalization is limited to a few words, e.g., 'momma'.
5. This PA was denied in its entirety with the basis for the denial being that the request does not meet medical necessity standards. In particular, the Department found confusion between parental expectations and goals as compared to the provider's PA submission. Further, Petitioner receives SLT in school so the PA request was determined to be duplicative in part.

### DISCUSSION

The Division of Health Care Access and Accountability 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 Wis. Admin. Code, Ch. DHS 107. Some services and equipment require submission and approval of a written prior authorization request by the provider. Some services and equipment are never covered. Speech language therapy is a service that requires approval of a request for prior authorization. *See, generally, Wis. Admin. Code, DHS §107.18.* A PA is required after 35 lifetime SLT sessions. *Wis. Admin. Code, DHS, §107.18(3).*

When determining whether to approve any prior authorization, the Division of Health Care Access and Accountability (DHCAA) must consider the generic prior authorization review criteria listed at *Wis. Admin. Code, DHS § 107.02(3)(e)*. Those criteria are:

- (e) *Departmental review criteria.* In determining whether to approve or disapprove a request for prior authorization, the department shall consider:
1. The medical necessity of the service;
  2. The appropriateness of the service;
  3. The cost of the service;
  4. The frequency of furnishing the service;
  5. The quality and timeliness of the service;
  6. The extent to which less expensive alternative services are available;
  7. The effective and appropriate use of available services;
  8. The misutilization practices of providers and recipients;
  9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including medicare, or private insurance guidelines;
  10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
  11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
  12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.

The Wisconsin Administrative Code does define the term 'medical necessity'. It is a service that:

"Medically necessary" means 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.

*Wis. Admin. Code, §DHS 101.03(96m).*

As with most public assistance benefits the initial burden of demonstrating eligibility for any particular benefit or program at the operational stage falls on the applicant, *Gonwa v. Department of Health and Family Services, 2003 WI App 152, 265 Wis.2d 913, 668 N.W.2d 122 (Ct.App.2003)*. In other words, it is Petitioner's burden to demonstrate that s/he qualified for the requested speech and language services by a preponderance of the evidence. It is not the OIG's burden to prove that s/he is not eligible. Further, I note that Medicaid is meant to provide the most basic and necessary health care services at a reasonable cost to a large number of persons and must authorize services according to the Wisconsin Administrative Code definition of medical necessity and other review criteria noted above. Finally, a provider is responsible for submitting current and accurate information with a prior authorization request. *Wis. Admin. Code, §DHS 106.02(9)(e)1.*

I am declining to reverse the denial of this PA; the Department's arguments are the more persuasive at this time as to this PA. The Department submitted a detailed written argument. Exhibit # 3. It is in the record and need not be reproduced here in detail. Again, the PA, as compared to the appeal submitted by Petitioner's mother and even the school IEP, was confusing. I agree with the Department. For example, the PA indicates that Petitioner is not capable of meaningful speech but Petitioner's mother testified that Petitioner made progress in the past with speech production. This is not quantified in the PA submission. Further, Petitioner's capabilities with the iPad are not clear.

I also noted that Petitioner's mother is concerned about SLT for Petitioner in the summer of 2016. I respectfully suggest that Petitioner's mother share the Department's December 2, 2015 letter with the provider the current or any other provider of her choice and determine if a PA can be generated for the summer of 2016 in time for the request for those services to be fully evaluated and, if approved, leave time in the summer to actually provide the services

*The provider will not receive a copy of this Decision. Petitioner's family may provide a copy of this Decision to the provider.*

### **CONCLUSIONS OF LAW**

That the evidence presented on behalf of Petitioner is not sufficient to demonstrate that this particular PA request meets the criteria necessary for payment by the Wisconsin Medical Assistance Program.

**THEREFORE, it is**

**ORDERED**

That this appeal 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 Milwaukee,  
Wisconsin, this 25th day of January, 2016

---

\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 25, 2016.

Division of Health Care Access and Accountability