



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

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In the Matter of

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

DECISION

MPA/170199

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 16, 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 15, 2015, at Racine, Wisconsin.

The issue for determination is whether the agency properly denied the Petitioner’s PA request for speech and language therapy services.

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: Laura Triller

Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Racine County. He is three years old and lives with his family.

2. Petitioner's diagnoses include apraxia, autism spectrum disorder and unspecified symbolic dysfunction.
3. Petitioner attends [REDACTED] where he receives speech and language therapy, physical therapy, and occupational therapy.
4. Petitioner participated in Birth – 3 services from April, 2014 – March, 2015.
5. Petitioner started receiving school services through the IEP in March, 2015. An assessment done for the IEP on February 25, 2015, it was reported that Petitioner had “nice receptive language skills” and that his expressive language consisted of verbal approximations of words and simple two word phrases. It was noted that he used language to make requests and ask for help. The assessor determined Petitioner exhibited limited and delayed expressive language and articulation skills when compared to peers. The IEP developed an annual goal for the Petitioner to increase his expressive communication, speech sound production and social communication skills with short term objectives as follows:
  - Petitioner will imitate animal/environmental sounds in finger plays, songs and play from a present level of 0/4 opportunities to 3/4 opportunities
  - Petitioner will use picture symbols, simple signs and/or verbal approximations to make requests for a desired object while engaged in a structured activity with fading models and prompts from a present level of 0/4 opportunities to 3/4 opportunities
  - Petitioner will use verbal approximations, signs, and/or pictures to name familiar objects with fading models and cues from a present level of 0/5 attempts to 4/5 attempts
  - Petitioner will establish eye contact during structured social activities (imitating sounds/actions) to imitate or obtain a desired item; from a present level of 0/5 attempts to 3/5 attempts
  - Petitioner will produce CVCV repetitive syllables with the same vowel and the following consonants (m, p, b, t, d, n, h and w) upon imitation from a present level of 0/10 trials to 6/10 trials
  - Petitioner will produce words that contain consonant-vowel sequences with fading models and cues from a present level of 0/10 opportunities to 6/10 opportunities
  - Petitioner will produce vowel-consonant sequences with fading models and cues from a present level of 0/10 trials to 6/10 trials

The IEP indicates that the Petitioner will receive speech/language therapy 3x 20 minutes/ week.

6. Petitioner's mother reports that the Petitioner receives speech/language therapy at school two days/week and attends a parent/play group at school one day/week.
7. Petitioner has been receiving OT and speech language therapy from [REDACTED] beginning May 20, 2015. The plan of care submitted with the PA contains the following goals:
  - Petitioner will demonstrate emergence for a) velars /k, g, h/ and b) anterior stridents /s, f/ in isolation or initial/final word positions 6/10x in structured tasks given max cues
  - Petitioner will sequence simple bilabial (B) and alveolar (A) sounds in monosyllabic structures (CV, VC, CVC, B-B, B-A, A-B, A-A) in 80% of opportunities in structured tasks given moderate cues

- Petitioner will sequence bilabial (B) and alveolar (A) sounds in bisyllabic structures with the following accuracies – a) CVCV 80%; b) CV1CV2 80%; c) VCV 75%; d) C1V1C2V2 60% in structured tasks given moderate cues.
  - Petitioner will increase receptive vocabulary for verbs by identifying an action pictured in a field of 4 items with 75% accuracy during structured tasks and given mod-max cues. (baseline 43%, PPVT)
8. On October 13, 2015, the Petitioner’s provider, [REDACTED], submitted a PA request for speech/hearing therapy for the Petitioner 2x/week for 26 weeks.
  9. On October 29, 2015, the agency issued a notice to the Petitioner informing him that the agency had denied the PA request.
  10. On November 16, 2015, an appeal was filed on behalf of the Petitioner.

### DISCUSSION

Speech and language therapy 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 agency employs the generic prior authorization criteria found at §DHS 107.02(3)(e). Those criteria include the requirements that a service be medical necessary, appropriate, and an effective use of available services. “Medically necessary” is defined in § 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. DHS 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). (Emphasis added).

In addition, in determining whether to approve or disapprove a request for prior authorization, the agency is required to consider the following:

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.

Wis. Admin. Code § DHS107.02(3)(e). (Emphasis added).

It is up to the provider to justify the provision of the service. Wis. Admin. Code, § DHS 107.02(3)(d)6. Therefore, the Petitioner and provider have the burden to prove, by a preponderance of the credible evidence that the requested level of therapy meets the approval criteria.

Prior authorization is required for physical therapy services in excess of 35 treatment day “per spell of illness.” Wis. Admin. Code §DHS 107.16(2)(b)

The primary reason for the agency’s denial of the current request for therapy is that the requested services are a duplication of services provided to the Petitioner at school.

Looking at the stated goals in Petitioner’s IEP and comparing them to the stated goals for the requested private therapy, the services do appear to be duplicative. Ultimately, they both seek to improve the Petitioner’s verbal/expressive communication, speech articulation and motor planning practice of specific sounds. Therefore, I find the agency reasonably concluded the services are duplicative and the requested service does not meet the definition of medical necessity under Wis. Admin. Code, §DHS 101.03(96m).

At the hearing, the Petitioner’s provider noted that the [REDACTED] ( [REDACTED] ) recommends 3 – 5 sessions/week of therapy and that the Petitioner has made great progress when he had at least 3 sessions/week. She and the Petitioner’s mother assert that he is only receiving two

sessions of 20 minutes (a total of 40 minutes/week) at school even though his IEP reports that he receives three sessions totaling 60 minutes/week.

As the agency representative noted in the December 9, 2015 letter regarding the agency's position in this case, the school must provide services that enable the student to meet the goals in the IEP:

“Special education services must enable the student to advance appropriately toward the annual goals in the individualized education program (IEP), to be involved in and make progress in the general education curriculum, to participate in extracurricular and other nonacademic activities and to be educated and participate with their nondisabled peers. The special education, related services, and supplementary aids and services must be based on peer-reviewed research to the extent practicable. [34 CFR § 300.320(a)(4)].”

Wisconsin Department of Public Instruction Update Bulletin 10.07.

Under Wis. Admin. Code § DHS 107.02(3)(e)7, the Petitioner must make effective and appropriate use of that service before additional private physical therapy will be covered by Medicaid. The Petitioner's IEP indicates that he should be receiving 3 sessions of therapy, 60 minutes/week at school. If he is not receiving that, the Petitioner should address that issue with the school. There must be a demonstration that school services are being maximized before additional therapy will be considered for coverage by Medicaid.

Based on the information provided, I conclude that the agency reasonably denied the Petitioner's request for speech and language therapy services of two sessions/week for 26 weeks beginning October 2, 2015.

### **CONCLUSIONS OF LAW**

The agency reasonably denied the Petitioner's request for speech and language therapy services of two sessions/week for 26 weeks beginning October 2, 2015.

**THEREFORE, it is**

**ORDERED**

That the Petitioner's 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 8th day of February, 2016

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\sDebra Bursinger  
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 February 8, 2016.

Division of Health Care Access and Accountability