



STATE OF WISCONSIN  
Division of Hearings and Appeals

---

In the Matter of

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

DECISION

MPA/170401

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed November 25, 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 January 19, 2016, at Waukesha, Wisconsin.

The issue for determination is whether the Department of Health Services, Division of Health Care Access and Accountability (DHS) correctly denied Health Reach Rehabilitation's September 2015 request for authorization to provide physical therapy services to the Petitioner.

NOTE: The record was held open until February 1, 2016, because the Petitioner submitted additional documentation for review. OIG submitted its response, via e-mail on January 27, 2016. It has been marked as Exhibit 10 and entered into the record.

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: OIG by letter

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

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Waukesha County.
2. On September 25, 2015, HealthReach Rehabilitation, submitted on behalf of Petitioner, a request for prior authorization of 16 sessions of physical therapy, once per week at a cost of \$1,344.00. (Exhibit 9, page 7)
3. The goals of the requested therapy were stated as follows:
  - a. Patient will be able to transfer sit to stand w/25% assist consistently from chair, car, bed.
  - b. Improve core stability as evidenced by supine to sit with 25% assist.
  - c. Patient will be free of status decline, hospitalization medically and physically
  - d. Increase AROM of the SLR and 90/90 positions to reduce risk of lumbar aggravation.
  - e. Patient will ambulated with assist of one for 10 minutes, including direction changes
  - f. Patient will ambulate with step initiation within :10 75% of time
  - g. Patient will hold head at 20 degrees flexion or less in sitting.

(Exhibit 9, pg. 22)
4. On September 29, 2015, DHS sent HealthReach Rehabilitation a notice containing the following PA error messages:
 

0A30 – Attach supportive documentation; home exercise program and written evidence of treatment coordination with other providers.

0A68 – Describe the reason, based on the member’s cognitive, physical, communcion, or resource status, that a home program, equipments, or environmental adaptations alone cannot meet member’s needs.

0A79 – Provide evidence of significant functional progress in last six months.

0A86 Provide evidence of skills gained in therapy carrying over to other settings within six months.

0A87 – Discuss how goals and rehabilitation potential are supported by the number of sessions requested.

(Exhibit 9, pgs. 52-53)
5. On October 2, 2015, the Petitioner’s physical therapist, ██████████ sent DHS a response. (Exhibit 9, pgs. 59-70)
6. On October 15, 2015, DHS sent the Petitioner and HealthReach Rehabilitation notices indicating the requested services were denied. (Exhibit 9, pgs. 72-77)
7. Petitioner’s mother, on behalf of Petitioner, filed a request for fair hearing that was received by the Division of Hearings and Appeals on November 25, 2015. (Exhibit 1)
8. The Petitioner is 19 years old, with diagnoses that include, but are not limited to Mitochondrial Disorder, osteoporosis, kyphosis, scoliosis, and cortical blindness. He functions at the cognitive level of a 6-9 month old child. The Petitioner is G-Tube and J-Tube fed, and has IVF running simultaneously for most of 24 hours per day. He is incontinent and ambulates with a wheelchair for longer distances. He utilizes a headmaster collar. (Exhibit 3)

9. The Petitioner has an Individualized Education Program through school and though he is homebound, he receives physical therapy at school as part of that program, once a week for 30 minutes. (Exhibit 9, pgs. 37-38)
10. The goals of school-based physical therapy are for Petitioner to, “demonstrate the strength, flexibility and balance required to enable participate in daily mobility routines with minimal assistance by meeting the benchmarks below:
1. Tolerate standing without physical assistance for 3-4 minutes, 3 times within a 30 minute session, 3:4 weeks
  2. Tolerate walking with minimal assistance 50 feet, when provided verbal and tactile cues, 2 times in a 30 minute session, 3:4 weeks
  3. Transition from sitting to and from standing with minimal assistance when provided verbal and tactile cues, 2:4 weeks”
- (Exhibit 9, pgs. 40 and 41)
11. Petitioner also receives private duty nursing services, up to 24 hours per day, 7 days per week, for 53 weeks. The physician order in the Care Plan Attachment states, “Nursing to follow through with home therapy recommendations per OT/PT”. This includes range of motion exercise. (Testimony of Ms. [REDACTED]; Exhibit 3; Exhibit 8, pg. 2)

### DISCUSSION

The Department of Health Services sometimes requires prior authorization to:

1. Safeguard against unnecessary or inappropriate care and services;
2. Safeguard against excess payments;
3. Assess the quality and timeliness of services;
4. Determine if less expensive alternative care, services or supplies are usable;
5. Promote the most effective and appropriate use of available services and facilities; and
6. Curtail misutilization practices of providers and recipients.

Wis. Admin. Code § DHS107.02(3)(b)

“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.”

“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. 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.

*Emphasis Added.* Wis. Adm. Code. §DHS 101.03(96m)

Petitioner has 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)

According to the December 21, 2015 letter provided by DHS, one of the primary reasons for DHS’s denial of the current request for physical therapy, is that there is a duplication of services.

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 give the Petitioner the strength, flexibility and balance to transition from sitting to standing (transfer), to stand for a period of time, and to walk. See Findings of Fact #s 3 and 10. Because there is an apparent duplication of services, the requested private therapy does not meet the definition of medical necessity under Wis. Adm. Code. §DHS 101.03(96m), above.

Petitioner’s mother argued that the Petitioner does not get school-based therapy when school is not in session or when he is ill. With regard to illness, it is reasonable to conclude that if the Petitioner was too ill for school-based therapy, then he would be too ill for private therapy. With regard to times when school is not in session, there is no documentation in the record to support a finding that the Petitioner has regressed in his abilities during those breaks.

Petitioner’s physical therapist at school submitted a letter expressing concerns about an appearance of or increase in a posterior lean. However, if the Petitioner requires additional physical therapy to correct this

problem, so that he can reach the goals of his IEP, then the school is obligated to provide that therapy. 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 and there is nothing in writing from the school district to show that they have refused to provide necessary services to the Petitioner, since the school-based physical therapist first observed Petitioner's posterior lean. Consequently, there is no basis upon which to approve private physical therapy, at this time.

DHS further argued that there is no need for the requested therapy, as there are other available services that can be effectively and appropriately used, in particular, school-based physical therapy and private duty nursing.

The reviewing standard described in Wis. Admin. Code §DHS 107.02(3)(e)7 *supra* causes the reader to consider whether the requested private therapy is still needed, even if the patient is taking advantage of available, appropriate services offered in other venues.

It is undisputed that the Petitioner receives private duty nursing services up to 24 hours per day, seven days a week. It is undisputed that the Petitioner has a home exercise plan. It is also undisputed that the private duty nurses are required to follow through with the recommendations of the physical therapist / home exercise plan and that they are able to work with the Petitioner on range of motion exercises and assist him with mobility and transfers.

Given that Petitioner's school-based therapy is working on the same basic goals of the requested private therapy and given that Petitioner's private duty nurses are required to follow through with Petitioner's home exercise plan and the recommendation of his physical therapist, it is unclear why the Petitioner needs the addition of private therapy, if those resources are being fully utilized. Thus, per Wis. Admin. Code §DHS107.02(3)(e)7., it was appropriate for DHS to deny the request for private physical therapy.

Petitioner's private physical therapist argued that because the Petitioner has pain issues, which cause him to act "manic", only a physical therapist can make sure the exercises are done safely and effectively. However, when asked how she manages the Petitioner's therapy in these situations, Petitioner's therapist testified that she just moves to a different part of the Petitioner's body to work around the painful area. The record contains no explanation for why Petitioner's nurses or school-based physical therapist could not do the same.

It is also argued that without the addition of private physical therapy that the Petitioner will be hospitalized more frequently due to respiratory distress. However, there is nothing in the stated goals of private therapy that directly addresses the Petitioner's ability to breath. The goals deal mainly with increasing the Petitioner's strength and flexibility to stand and walk. Further, when looking at the list of hospitalizations on page 64 of Exhibit 9, the two most recent hospitalizations listed there occurred in May 2015 and July/August 2015, while Petitioner was receiving private therapy. As such, it is difficult to conclude the addition of private physical therapy prevented respiratory distress.

Without question, Petitioner's medical condition is complex. Without question, he does need some form of physical therapy. However, Health Reach Rehabilitation has not sufficiently justified the need for private physical therapy, in addition to the school-based therapy and follow-up from private duty nursing.

It should be noted that if the Petitioner has had a documented decline or change in condition, that Petitioner's private physical therapist can submit a NEW request for prior authorization. If that request is denied, then Petitioner may file a NEW appeal.

**CONCLUSIONS OF LAW**

DHS correctly denied Health Reach Rehabilitation's September 2015 request for authorization to provide physical therapy services to the Petitioner.

**THEREFORE, it is**

**ORDERED**

That 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 Milwaukee,  
Wisconsin, this 3rd day of February, 2016

---

\sMayumi M. Ishii  
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 February 3, 2016.

Division of Health Care Access and Accountability