



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION

MPA/170973

PRELIMINARY RECITALS

Pursuant to a petition filed November 24, 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 (MA), a telephonic hearing was held on April 14, 2016, at Racine, Wisconsin. The record was held open post-hearing to allow the petitioner to provide additional information, which was received and forwarded to the Office of Inspector General (OIG) for review and comment, which was also received.

The issue for determination is whether the Department of Health Services (Department) correctly denied petitioner's prior authorization (PA) request for occupational therapy (OT).

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

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Racine County. He is 3 years old and his diagnoses are listed as muscle weakness and lack of normal physiological development.
2. On August 19, 2015 the petitioner's OT provider, [REDACTED], submitted a PA for 52 OT sessions to begin September 17, 2015. The PA was returned several times to the provider requesting additional information and clarification.
3. On October 22, 2015 the Department issued a notice of denial for the OT services because the OT services were not shown to be medically necessary.
4. Petitioner receives OT through his school district.

DISCUSSION

OT is covered by MA under Wis. Adm. Code, §DHS 107.17. Generally OT is covered without need for prior authorization for 35 treatment days, per spell of illness. Wis. Adm. Code, §DHS 107.17(2)(b). After that, prior authorization for additional treatment is necessary. If prior authorization is requested, it is the provider's responsibility to justify the need for the service. Wis. Adm. Code, §DHS 107.02(3)(d)6 (emphasis added). If the person receives therapy in school or from another private therapist, there must be documentation of why the additional therapy is needed and coordination between the therapists. Prior Authorization Guidelines Manual, p. 112.001.02, nos. 2 and 3.

In reviewing a PA request the Department must consider the general PA criteria found at §DHS 107.02(3) and the definition of "medical necessity" found at §DHS 101.03(96m). Section DHS 101.03(96m) defines medical necessity in the following relevant provisions:

"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.

Wis. Adm. Code §DHS 101.03(96m).

The Department interprets the code provisions to mean that a person must continue to improve for therapy to continue, specifically to increase the ability to do activities of daily living. In addition, at some point the therapy program should be carried over to the home, without the need for professional intervention. In this case, the Department denied the request because it could not determine from the information submitted by petitioner's provider that there were objective measurements of his limitations (strength), measured in consistent units over the course of treatment, so as to show the need for continued weekly private OT. Additionally, the Department asserts that because petitioner has been receiving private OT services since 2013, all of which were intended to address his strength limitations, that effective treatment to increase strength should have resolved the limitation. The Department was not swayed by the provider's measurement of petitioner's strength being measured in time. As stated by the OIG consultant in her last response dated April 26, 2016,

The OIG offers that the amount of time a person holds an object, any object, would appear to be ore directly dependent on the individual's intent or desire to hold the object. If the amount of time alone was a measure, many other factors would also need to be considered – the weight of the object, the size and shape of the object; how the person is holding the object and overall body position, and the purpose for which the item is held.

The petitioner's provider and mother appeared at hearing and clearly want what is best for petitioner. However, I do not find that they have rebutted the agency's case. If a record of therapy does not include objective findings measured in consistent terms routinely over a course of intervention, the direct influence of the therapy service is not established. Any changes may have been a result of maturation, or repetition of a task over the course of daily routine as supervised or facilitated by all persons involved with an individual – whether it be family, school services, etc.

It is true that a therapist may assert that a skilled level of intervention is needed but this must be supported by clinical information. Therapy services are then considered required when the problems identified can be reasonably associated with the presenting concern and the proposed services are reasonably expected to resolve the deficits. I have reviewed the petitioner's evidence carefully and in detail. I can only conclude that the Department's denial of the requested OT regimen was correct. The provider did not adequately document the medical need for the requested OT. The measurements are not stated objectively or do not show any significant changes so as to show a requirement for the requested weekly sessions by a skilled therapist. If the petitioner is at risk for any changes in his status that require weekly private OT sessions, the requesting provider has not offered the evidence of this – for example, objective measurements of all his limitations as reported at intervals that support change (either progress or regression) which occurs so rapidly that only weekly services by the requesting provider may meet his needs. This does not require the use of standardized testing, but rather an objective measure from which progression or regression can be seen. Further, the private PT may well indeed be qualified to assess a client by using the terms "decreased", "impaired" or "improved", however, when requesting PA, the provider is required to measure deficits objectively so that a baseline of a client's functional limitations are identified, a plan of care can be derived, and progress, if any, can be shown to authorize the therapy. The Prior Authorization/Therapy Attachment (PA/TA) Completion Instructions recite this requirement several times. See PA/TA Completion Instructions, available online at <https://www.dhs.wisconsin.gov/forms/fl/fl1008a.pdf>. I note that the Instructions specifically state in Section VI the requirement for using specific, measurable, and objective terms, and terms that are not considered as such, along with examples that are acceptable. This is not meant to diminish the challenges petitioner and his family face, but rather to show that the provider has not yet objectively shown the measurements needed to continue services.

The petitioner may file a new PA Request at any time in the future, and submit new clinical documentation designed to establish these clinical facts and observations for the Department to then review.

While petitioner may believe this to be unfair, it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on constitutional or equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The Department correctly denied petitioner's PA request for occupational therapy OT.

THEREFORE, it is **ORDERED**

The petition for review herein 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.

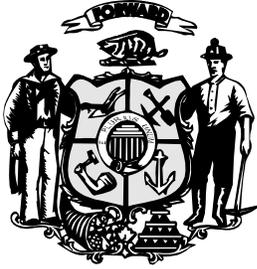
Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why 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 4th day of May, 2016

\sKelly Cochrane
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 May 4, 2016.

Division of Health Care Access and Accountability