



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/170992

PRELIMINARY RECITALS

Pursuant to a petition filed December 23, 2015, under Wis. Stat., §49.45(5), to review a decision by the Division of Health Care Access and Accountability (DHCAA) to deny Medical Assistance (MA) authorization for occupational therapy (OT), a hearing was held on February 10, 2016, at Madison, Wisconsin, with the parties appearing by telephone.

The issue for determination is whether the DHCAA correctly denied OT because the request failed to document petitioner’s limitations.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Written submission of [REDACTED], OTR

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 12-year-old resident of Wood County who receives MA.
2. Petitioner has spastic quadriplegic cerebral palsy. He has been receiving OT from [REDACTED] LLC and covered by MA since August, 2008, and virtually non-stop since September, 2009 (based upon prior authorization approvals). In 2013 the DHCAA denied a request for OT but the Division of Hearings and Appeals reversed the denial in case no. MPA-153478. The DHCAA thereafter granted three more PA requests for the period March, 2014 through September, 2015.

3. On October 21, 2013, ██████████ requested a new prior authorization for twice monthly OT sessions for six months with a start date of October 19, 2015, PA no. ██████████. By a letter dated November 27, 2015 the DHCAA denied the request.
4. The request includes two scaled tests given to petitioner, the “PEDI” and the “BOT.” Both tests provide scales that compare the child’s general functioning to his age level, but both fail to provide objective measures of the child’s capabilities, i.e., his strength, coordination, bilateral hand use, range of motion. As a result it is impossible to determine if any progress made by petitioner is due to the therapy or due to natural maturity, or even if progress is being made.

DISCUSSION

OT is covered by MA under Wis. Admin. Code, §DHS 107.17. Generally OT is covered without need for prior authorization for 35 treatment days, per spell of illness. Wis. Admin. 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. Admin. Code, §DHS 107.02(3)(d)6. 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, Physical, Occupational, and Speech Therapy, Topics 2781 and 2784.

In reviewing a PA request the DHCAA must consider the general PA criteria found at §DHS 107.02(3) and the definition of “medical necessity” found at §DHS 101.03(96m). §DHS 101.03(96m) defines medical necessity in the following pertinent 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; ...
 3. Is appropriate with regard to generally accepted standards of medical practice; ...
 6. Is not duplicative with respect to other services being provided to the recipient;
 8. ...[I]s 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.

The DHCAA denied the request primarily because the evaluation did not show the medical need for the services. The consultant noted that although the evaluation showed problems to be worked on, it did not identify why petitioner was unable to accomplish the tasks. After reviewing the evidence, I have to agree with the DHCAA.

As noted by Ms. ██████████ in her January 25, 2016 response, without objective measurements of the child’s capabilities it is impossible to tell if the OT services are helping him. On the other hand, it is easy to report “progress” by showing small changes in the goals even if the person has no functional increase in his capabilities. While it is only one example in the request, petitioner’s goal in 2014 was to cut food with a knife, but then in 2015 the goal is to cut food with an adaptive knife. We still do not know why, objectively, a regular knife is outside of petitioner’s capabilities or whether petitioner is likely to learn how to use an adaptive knife. Furthermore, all of the goals of the private therapy address the need for improved strength and coordination, but there is no baseline concerning petitioner’s strength and

coordination. See the PA/TA Completion Instructions attached to Ms. [REDACTED]'s letter for examples of how deficits should be documented.

The simple fact is that petitioner has been receiving OT for almost eight years, which is far beyond the length anticipated by the MA program. There is a reason why therapy services are reviewed in six-month increments. There is an expectation that measureable progress should occur in that time, and it is an unusual circumstance when six months is insufficient.

I am fully aware that a fair hearing decision reversed a denial of OT for petitioner two years ago. I note, however, that the judge focused entirely on whether the request showed progress, and he did not mention at all the lack of objective measurement that was the focus of the consultant's position. The judge, in fact, did just what Ms. [REDACTED] warned against by accepting that the request showed progress solely because the therapist said there was progress, even though the therapist did not substantiate the progress objectively.

I am upholding the denial not because there was or was not progress, but because the request did not substantiate the need for the service due to failing to show petitioner's objective capabilities. Petitioner's therapist, Ms. [REDACTED], seemed puzzled by Ms. [REDACTED]'s position, but it is evident that there are therapists in the state who are documenting impairments and deficits as the Department demands because this office is not seeing multiple appeals on the issue.

It is puzzling to me why the DHCAA granted three more PA requests after the fair hearing reversal, but at some point there needs to be a conclusion to the therapy regime. I am also puzzled why the DHCAA did not question that petitioner also is receiving OT in school, as the Department typically does not approve private OT for children who receive OT in school (I note that both the school and the private therapy have as a goal to improve petitioner's ability to maintain upright posture, which typically leads to an automatic denial of the private therapy). I will not address that issue because it was not raised by Ms. [REDACTED].

Clearly the family has a home program ongoing to assist petitioner. It was asserted that the requested OT is to review the progress of the home program. I do not see why the home program would need to be reviewed twice a month.

CONCLUSIONS OF LAW

The DHCAA correctly denied the request for OT in PA no. [REDACTED] because the request fails to document objectively petitioner's deficits in strength, coordination, and other capabilities.

THEREFORE, it is

ORDERED

That the petition for review is hereby 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 17th day of February, 2016

\sBrian C. Schneider
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
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 17, 2016.

Division of Health Care Access and Accountability