



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MPA/171324

PRELIMINARY RECITALS

Pursuant to a petition filed January 06, 2016, 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 February 09, 2016, at Appleton, Wisconsin.

The issue for determination is whether the Department correctly modified the requested Physically Therapy (PT) services.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: [Redacted] PT, DPT
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # [Redacted]) is a 6 year old resident of Outagamie County.

2. The petitioner has delayed milestones in childhood development. He has also been diagnosed with Down syndrome. The petitioner is seeking Physical Therapy (PT) services at [REDACTED] in Green Bay, WI.
3. The petitioner has received private PT services since at least September, 2014. Since September 2014 the Department has approved 19 PT sessions. Between September 4, 2014 and November 4, 2014 the Department approved 3 PT sessions. Between November 17, 2014 and May 26, 2015 the Department approved 9 PT sessions. Between May 27, 2015 and September 10, 2015 the Department approved 7 PT sessions. There is now the new PA request, which is the subject of this appeal.
4. In addition to private PT services, the petitioner receives PT at school through his Individualized Education Plan (IEP). He receives 30 minutes of PT services four times per week. The petitioner's IEP notes that: he is independent in walking, he uses playground equipment with minimal assistance, he enjoys running with other children and playing chase games, he likes to be independent when moving around the school playground, although, this is not possible because of safety concerns given his developmental delays and sometimes unsafe choices, he has a delay in his comprehension, and cannot safely follow directions or stay with a group, he is impulsive in his movement and does not have regard for his own safety when in halls, on stairs, or on the playground, and he participates in a physical education class. The petitioner receives PT services through his IEP to improve his balance, strength, and endurance, which would in turn improve his mobility and functional gross motor skills. He also requires the physical therapist to train staff on safe mobility to allow him to transition to all school environments.
5. On November 13, 2015 the petitioner's provider, [REDACTED], submitted a prior authorization request for 10 PT sessions over a 16 week period. The goals through this therapy were for the petitioner to be able to safely and independently negotiate stairs and curbs, and to safely and efficiently walk on all surfaces, improve static stance by improving his ability to maintain a single leg stance for 3 seconds, improve dynamic balance by being able to negotiate stairs with one rail assist using step-to and reciprocal gait pattern, and improve strength by being able to independently step up and down a 3 inch stair.
6. On December 14, 2015 the Department sent the petitioner a notice stating that they modified the petitioner's prior authorization request, and approved 5 of the 10 requested PT sessions.
7. On January 11, 2016 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

DISCUSSION

Physical therapy is covered by MA under Wis. Adm. Code, §DHS 107.16. Generally it is covered without need for prior authorization (PA) for 35 treatment days, per spell of illness. Wis. Adm. Code, §DHS 107.16(2)(b). After that, PA for additional treatment is necessary. If PA is requested, it is the provider's responsibility to justify the need for the service. Wis. Adm. 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 Manual, p. 111.001.02, no. 3.

The Department has long held the position that private therapy is not covered when school therapy and private therapy basically address the same deficits using the same techniques. Thus, for private therapy to be approved when school services are in place, there must be some deficit or deficits that the school therapist cannot address. See Final Decision no. MPA-37/80183, dated February 16, 2007, which reaffirmed that analysis as it concerns speech therapy; the rules/policies for speech and physical therapy are identical.

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. HFS 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 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. Finally the MA program will not pay for therapy if the person already receives therapy from a different provider.

One reason for the modification of PT sessions from the 10 requested to the 5 that were approved was that the petitioner is supposed to be receiving services in school that are meant to address the same issues that the private therapy is addressing. One of the petitioner’s arguments is that at private therapy he is not only working on stairs, but also working on curbs and bicycle safety. The petitioner further argues that even though the school IEP states that they are helping the petitioner with stairs, all of his classes are on the same floor. He receives therapy in a gym setting in the winter, and the school therapy is generally a lower quality than the private therapy requested.

The IEP notes that the petitioner is “impulsive in his movement and does not have regard for his own safety when walking through the halls, **going up/down stairs**, or playing on playground equipment” (emphasize added.) The IEP then provides limited PT services to increase the petitioner’s balance, strength, and endurance in order to improve his mobility and functional gross motor skills. The private therapy appears to be addressing the same functional deficits and to improve the petitioner’s gross motor skills. The Department nonetheless approved some of the requested PT services as the petitioner’s needs appear to be greater than the PT services his school provides. This is appropriate in this situation.

I further note that the MA program is only designed to provide basic and necessary medical care. Even if the private PT services are far superior to the school services, as long as the school services can properly address the same concerns, the private PT services will be denied as duplicate services. Duplicate services are not cost effective.

I also agree with the Department that the reduction was correct because there can be more carry through with the family at home. The petitioner’s mother notes that she is present when her son attends private therapy. This allows her to work on skills, learn from the therapist, and carry over these exercises and techniques at home. The petitioner’s mother is correct. I believe that the reduction still allows for this, and that there can be an even greater carry over and working with the petitioner on these skills at home.

CONCLUSIONS OF LAW

The Department correctly modified the requested Physically Therapy (PT) services.

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 11th day of March, 2016

\sCorinne Balter
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 March 11, 2016.

Division of Health Care Access and Accountability