



FH
[REDACTED]

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

In the Matter of

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

DECISION

MPA/173047

PRELIMINARY RECITALS

Pursuant to a petition filed March 22, 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 (the agency) in regard to Medical Assistance (MA), a telephonic hearing was held on April 28, 2016, from Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly denied petitioner's prior authorization for Child/Adolescent Day Treatment (CADT) services.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Petitioner's Representative:

[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 (CARES # [REDACTED]) is a resident of Kewaunee County. He is now 18 years old and receives MA.
2. On January 29, 2016, [REDACTED] requested prior authorization for CADT services for the petitioner (PA # [REDACTED]) to begin February 2, 2016.
3. On February 11, 2015 the PA was returned to the provider for additional information. The provider submitted additional information to the DHCAA on February 19, 2016.
4. By a letter dated March 7, 2016 the DHCAA denied the request.
5. Petitioner was enrolled in the Comprehensive Community Support (CCS) program during the timeframe at issue.

DISCUSSION

Mental health day treatment services can be covered by MA when medically necessary and appropriate. Wis. Admin. Code, §DHS 107.13(4). With all PA requests it is the provider's duty to justify the provision of the services. Wis. Admin. Code, §DHS 107.02(3)(d)6.

CADT can be covered as a "HealthCheck-Other Service," per Wis. Admin. Code, §DHS 107.22(4), which provides:

OTHER NEEDED SERVICES. In addition to diagnostic and treatment services covered by Wisconsin MA under applicable provisions of this chapter, any services described in the definition of "medical assistance" under federal law, 42 USC 1396d(a), when provided to EPSDT patients, are covered if the EPSDT health assessment and evaluation indicates that they are needed. **Prior authorization under s. DHS 107.02(3) is required for coverage of services under this subsection.**

Emphasis added.

Section DHS 107.02(3) of the Administrative Code sets forth the procedures for prior authorization, the reasons for prior authorization, and the penalty for non-compliance. Under Wis. Adm. Code, §DHS 107.02(3)(c), the PA request was denied, which provides:

(c) *Penalty for non-compliance.* If prior authorization is not requested and obtained before a service requiring prior authorization is provided, reimbursement shall not be made except in extraordinary circumstances such as emergency cases where the department has given verbal authorization for a service.

See also Wis. Adm. Code §DHS 107.03(9).

Here, the provider failed to obtain written prior authorization before providing CADT services. This alone is sufficient basis to deny the PA. The provider agreed at hearing that this was not an emergency service and there was no evidence provided to show that it was. The petitioner's representatives at hearing argued that the agency's past practice has not shown them that the Code provision cited above is used in these situations. Other than this anecdotal testimony, there was no evidence to show that the agency acted differently in prior cases, and even if there was, prior PAs have no bearing on this matter at hand.

I also add that CADT is defined in the Wisconsin Administrative Code at §DHS 40.03(15) as

non-residential care provided on prescription of a physician in a clinically supervised setting that provides case management and an integrated system of individual, family and group counseling or therapy or other services assembled pursuant to an individually prepared plan of treatment that is based upon a multi-disciplinary assessment of the client and his or her family and is designed to alleviate emotional or behavioral problems experienced by the client related to his or her mental illness or severe emotional disturbance.

Another reason this PA request was denied is because petitioner is enrolled in the CCS program. CCS is defined at Wis. Admin. Code, §DHS 36.03(22) as

the medical and remedial services and supportive activities provided to or arranged for a consumer by a comprehensive community services program authorized by a mental health professional to assist individuals with mental disorders or substance-use disorders to achieve the individual's highest possible level of independent functioning, stability and independence and to facilitate recovery.

The Wisconsin Administrative Code regarding MA funding for CCS services that “mental health services under s. DHS 107.13 (2) [outpatient psychotherapy services] and (4) [mental health day treatment] are not reimbursable for recipients receiving services under this subsection.” Wis. Adm. Code §DHS 107.13(7)(b)1.

In other words, the MA program is prohibited from paying for the CADT as a fee-for-service if the person is enrolled in a CCS program. The reason is because the CCS program is expected to provide all necessary services to meet the client’s mental health needs. That does not mean that a person in CCS cannot take part in CADT services; it means only that MA cannot pay for CADT as a separate service. According to what little information I have for CCS programs, it appears that a CCS client can be referred to CADT, but the CCS program must pick up at least part of the cost before state money picks up the remainder. In other words, there is a process for a CCS client to receive CADT services, but it is not to have the CADT program file an unconnected prior authorization request for coverage by the MA program.

I must conclude that the agency correctly denied the PA request in this case. State law does not cover any service requiring prior authorization for which prior authorization was not obtained prior to the provision of the service except in emergency circumstances, and does not allow independent MA coverage for the service because petitioner is enrolled in the CCS program.

I add, assuming petitioner finds this decision unfair, that 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 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 agency correctly denied the PA request for CADT because prior authorization was not obtained prior to the provision of the service and because petitioner already is receiving mental health services through the CCS program.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same 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.

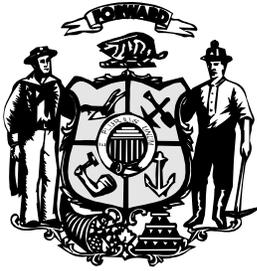
APPEAL TO COURT

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 Milwaukee,
Wisconsin, this 24th 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 24, 2016.

Division of Health Care Access and Accountability

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