



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

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In the Matter of

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

DECISION

MPA/173608

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 08, 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 (MA), a hearing was held on May 10, 2016, at Waukesha, Wisconsin.

The issue for determination is whether the agenc properly modified the Petitioner’s PA request for physical therapy services.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

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

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█  
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Respondent:

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

By: [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:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Waukesha County. He is 4 years old and lives with his family.

2. Petitioner was born prematurely and has a significant medical history with chronic lung disease, tracheomalacia, HIE, chronic respiratory failure and seizures. In November, 2013, the Petitioner was diagnosed with sepsis due to severe dehydrations. This led to subsequent fluctuation in development, tone, irritability and dysautonomia. He is on a ventilator at night. He has diagnoses that include delayed milestones in childhood and unspecified lack of coordination. Specifically, the Petitioner's plan of care reports he has decreased muscle coordination, muscle weakness, abnormal extensor muscle tone, decreased overall head control, increased forward trunk flexion causing risk for khyphosis, delayed rolling and floor mobility, decreased lower extremity control and balance in supported standing, weakness of upper extremities in prone and modified four-point.
3. On March 7, 2016, the Petitioner's provider submitted a PA request for physical therapy services 2x/week for 26 weeks. Petitioner has previously had PAs approved for PT beginning in 2013.
4. Petitioner has an IEP but it does not include physical therapy services. Petitioner is currently receiving all IEP services at home. With regard to physical therapy, the IEP states: "[Petitioner] has been receiving 60 minutes per month of school based physical therapy services since October of 2014 to support his special education goals related to positioning. He also receives private home PT services." It also states: "Physical therapist will consult with staff and provide training regarding positioning and equipment needs when staff have questions or feel assistance or training is needed." In addition: "Team discussed frequency of direct PT service. It was decided that consultation from the physical therapist is appropriate at this time, as [Petitioner] has all necessary equipment for positioning during learning activities and private physical therapy to work on strengthening."
5. The Petitioner has a PA approved for 128 hours/week of private duty nursing (PDN) services. The plan of care for PDN services includes passive range of motion, application of leg AFO's, use of stander twice daily, increasing as tolerated; application of hand braces for 2 hours during the day; follow through with physical and occupational therapies twice monthly. Currently, the Petitioner is receiving 68 hours/week of PDN services. PDN services are currently provided 60 hours/week overnight hours and 8 hours/week on Thursdays during the day. The family is seeking additional daytime nursing services but have been unable to find adequate staff to fill hours.
6. On March 28, 2016, the agency issued a notice to the Petitioner informing him that the agency approved 6 physical therapy sessions for a period of 26 weeks.
7. On April 8, 2016, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### **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. Admin. 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. 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 Manual, p. 111.001.02, nos. 3 and 4.

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

“Medically necessary” means a medical assistance service under Chapter 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; ...
  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. ...[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 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 addition to the above provision, the Wis. Admin. Code also states that with regard to physical therapy services, an extension shall not be approved when “other therapies are providing sufficient services to meet the recipient’s functioning needs.” Wis. Admin. Code § DHS 107.16(3)(e)6.

The agency asserts that the PA was modified because the documentation does not support that the skills of a PT are required twice weekly in addition to daily opportunities at home for carryover of a home exercise program to include strengthening, range of motion and positioning suggestions to be carried out by the Petitioner’s nursing staff and family.

The agency asserts that the Petitioner receives PDN services which include range of motion activities, positioning and strengthening as well as follow through on PT recommendations. It states: “It appears that at this time, the member’s mobility needs can be met with carryover of home programming from family/caregivers and nursing staff, as monitored and progressed by a skilled physical therapist, in order to encourage continued strengthening, range of motion and positioning activities.”

The issue with the agency’s reasoning is that the Petitioner’s therapist and mother established that the Petitioner is currently not receiving physical therapy services from PDN or from school. He only receives PDN services at night, with the exception of Thursdays when he has PDN services for 8 hours during the day. During that 8 hours, his mother testified that the private duty nurse assists with bathing, medications, other activities of daily living and occupational therapy. She testified that some stretching is able to be done with the activities of daily living but there is no strengthening or positioning activities taking place. Petitioner’s mother testified that she is doing what she can with the home exercise program. She notes, in addition, that the school discontinued regular PT because Petitioner was receiving private PT. Now that private PT has been discontinued and school PT is discontinued and PDN services are limited with regard to PT, the Petitioner is getting little in the way of PT.

Based on the evidence provided, I conclude it is reasonable to approve PT services for the Petitioner at a frequency of 1x/week for 13 weeks. This is based on the fact that the Petitioner is not receiving PT at school or through PDN services. He is getting PT through his home exercise program and a limited amount of PT through stretching 1x/week with PDN services on Thursday. The Petitioner’s family is actively seeking additional PDN services so that PT can be done as part of those services. If the Petitioner’s family is able to find additional PDN services and additional strengthening and positioning exercises are done as part of those services, the need for additional private PT may not be necessary.

Therefore, I am allowing PT 1x/week for 13 weeks to allow Petitioner's family some time to try to add PT through the PDN services. At the end of 13 weeks, the need for services can be re-evaluated. If the family has been able to staff additional PDN hours, the private PT may not be necessary. The Petitioner's family may also want to request that the limited PT services in the IEP be reconsidered based on the reduction in private PT that the Petitioner is receiving.

**NOTE: Petitioner's family should be aware that Petitioner's provider will not receive a copy of this Decision. In order to have the physical therapy approved, Petitioner must provide a copy of this Decision to the provider. The provider must then submit a new prior authorization request to receive the approved coverage.**

### CONCLUSIONS OF LAW

The Petitioner is eligible for PT services 1x/week for 13 weeks.

**THEREFORE, it is ORDERED**

That Petitioner's provider is hereby authorized to provide the Petitioner with PT services 1x/week for 13 weeks and to submit its claim, along with a new prior authorization request and a copy of this Decision, to ForwardHealth for payment.

### **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 27th day of June, 2016

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\sDebra Bursinger  
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 June 27, 2016.

Division of Health Care Access and Accountability