

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a 12-year-old a resident of Marathon County who receives MA.
2. On April 27, 2016, Therapies Plus LLC, requested authorization for twelve weekly OT sessions, PA no. [REDACTED]. By a letter dated May 24, 2016, the DHCAA denied the request. See, Exhibit 2.
3. Petitioner has diagnoses of unspecified symptoms and signs of the nervous system, congenital CMV, hearing impairment with left cochlear implant, left facial paralysis, muscle weakness, and muscle incoordination. See, Exhibit 2.
4. Petitioner has been receiving OT, which she has recently been paying for out-of-pocket. Reports and evaluations submitted in support of petitioner's prior authorization request contain little or no specific and/or objective measurements of petitioner's abilities and disabilities.
5. Petitioner attends the Wisconsin School for the Deaf, and receives therapy in school pursuant to an Individualized Education Program (IEP).

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 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.

Ms. [REDACTED], the Department's OT consultant, noted that although the prior authorization submission included information regarding petitioner's performance on certain tests and other measures, it failed to identify what the petitioner cannot do and why. Furthermore, she noted that the OT evaluation does not include an assessment of the petitioner's abilities to perform activities of daily living. Exhibit 1. After reviewing the evidence, I have to agree with the respondent.

The respondent's major concern is that the OT evaluations show little objective evidence of petitioner's specific deficits. Ms. [REDACTED] objected to the use of generalities such as "clinically significant executive dysfunction" as problems to be addressed. Such descriptive phrases do not provide objective evidence of petitioner's abilities. I agree. It is unclear where petitioner's baseline is, and how the activities will improve the deficits.

The problem is that MA coverage of OT services necessitates that the client's abilities be put into words that can be measured objectively. Petitioner's mother testified that petitioner's providers are hoping to stimulate her nervous system in order to avoid the use of a wheel chair or crutches, as well as address behavior issues and violence. She reports that petitioner's school OT and physical therapy have done a great job, and that the requested services were meant to cover the summer, when she was away from school. Unfortunately, the prior authorization request failed to establish petitioner's specific deficits *and* how the request OT would address them.

I conclude that the denial of the PA request was appropriate.

CONCLUSIONS OF LAW

The respondent correctly denied the request for OT services because it failed to identify petitioner's specific deficits and how the request OT would improve her functional abilities.

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, **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 25th day of August, 2016

\s _____
Peter McCombs
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 August 25, 2016.

Division of Health Care Access and Accountability