FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

MPA/141689

PRELIMINARY RECITALS

Pursuant to a petition filed June 15, 2012, 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 July 12, 2012, at Waukesha, Wisconsin.

The issue for determination is whether the agency properly denied the Petitioner's PA request for PT services.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Pamela Hoffman
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 8 years old.

2. Petitioner has a diagnosis of Gaunosine Triphosphate Cyclohydrolase I Deficiency. As a result of this deficiency, the Petitioner cannot crawl or walk, cannot pull himself to a sitting position, cannot make needs known, needs maximum assistance with all activities of daily living and is cognitively and developmentally delayed.

3. The Department has approved up to 12 hours/day of private duty nursing from October 26, 2011 – October 26, 2012 for the Petitioner. The private duty nurse administers medications to the Petitioner, administers treatment as needed throughout the day and provides cares as needed throughout the day.

4. The Petitioner has a school IEP developed April 16, 2012. The Petitioner attends school 4 – 5 hours/day. He receives physical therapy services at school 2x/week. With regard to motor skills, the IEP indicates that the Petitioner is fully dependent in all areas of mobility and participation. He is able to sit for 5 minutes independently. It notes that his sitting on the floor is inconsistent posturally as sometimes his spine will shift off of midline. He is able to use an adaptive chair to sit at his desk in the classroom. He demonstrates sporadic weight bearing through his legs when physically prompted. He is unable to stand without maximum lateral support of his trunk and knees. He requires ankle-foot orthosis. He is able to stand in an EZ stander for up to 45 minutes. Readjustment of the stander happens frequently as he changes the way he stands on an ongoing basis. He requires a two person lift for transfers. He is not able to take steps in a walker or pedal a bike without maximum assistance to move his legs and hold the hand rests. He is able to push a ball off his lap on 2 – 5 trials. He will reach for an object 3 of 6 trials with minimal support. The IEP identifies a goal of the Petitioner to improve sporadic bilateral weight bearing with physical prompting to weight bearing up to 16 seconds while also pushing forward. In addition, there is a goal to hold onto the hand rests up to 30 seconds to successfully ride a bike and move the bronco (an assistive gait device for uneven surfaces) 1 of 5 trials. Other goals include making contact with different sizes of balls by extending his legs in 2 of 5 trials and grasping/holding multiple size objects for 15 seconds to 30 seconds with minimal support. Physical therapy is scheduled to occur 2x/week, 30 minutes regular classroom and 30 minutes therapy room. The IEP notes that for skills related to motor development, he will also receive services when participating in classroom activities and the services will be provided by school personnel only when the private nurse is absent.

5. The provider's plan of care indicates short term goals to push to sit over edge of mat or bed, bridge in supine on mat or floor, demonstrate 10 degrees increase in neck range of motion, maintain midline trunk alignment in propped sitting for 5 minutes, and demonstrate improved rib cage and trunk mobility by 25% for improved posture and control to allow for more participation in functional mobility and movement for play. Long-term functional outcomes identified in the provider's care plan include: maintaining midline trunk alignment in propped sitting for up to 10 – 15 minutes and demonstrate ability to reach for object while maintaining. A second long-term outcome is to push up in bed utilizing bridging and pulling on bed rail with minimal assist to help parent and nurse with bed mobility for hygiene/dressing/position changes. An additional outcome is to roll to side and push to sitting in bed with moderate assist and verbal cues. A further goal is to perform 75% of sliding board transfer downhill or level surface. A final outcome is to complete a trial of power wheelchair mobility training in the clinic.

6. On April 11, 2012, a PA request was submitted requesting direct PT services 2x/week for 26 weeks beginning May 3, 2012 at a cost of $7,826. A previous PA request for PT services submitted by the provider in February, 2012 was modified to 12 visits to provide home programming instructions to the Petitioner's family and nurse caregivers. The current PA request indicates that the Petitioner requires direct PT services in order to regain functional skills after an extended period of illness and to instruct the Petitioner's family and caregivers.

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:
> . . .
> 6. Is not duplicative with respect to other services being provided to the recipient . . .
> 8. Is 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.

DHS 107.02(3)(d)6 requires a request for PA to identify justification for the provision of the requested service.

The Department appeared via written summary of the bases for its denial. The Department contends the provider has not justified the requested service as required by DHS 107.02(3)(d)6 because there is insufficient documentation of the Petitioner's potential to meet the stated goals. It notes that the documentation suggests that Petitioner is medically compromised, requiring constant nursing care to breathe, eat, medicate and re-position. In addition, the Department questioned the Pet itioner's ability to endure the PT services requested at this time. The Department contends that the Petitioner would benefit from home health physical therapy consultation with the family and nurse regarding equipment usage, modification of home program as necessary and determining when the Petitioner will be able to participate fully in outpatient PT services. It notes that the Petitioner has a variety of equipment pieces at home including therapy benches, swing seat, stander, large therapy ball, ankle-foot orthotics, walkable and accompanying treadmill, Benik vest, hip helpers therapy shorts, therapy wedge, pony walker, wheelchair and hoyer lift. The Department recommends that the Petitioner receive indirect and direct PT services at school and in his home until his health is stabilized and he has the energy to participate in a more aggressive PT plan of care.

The Department also contends that the services do not meet MA's definition of medical necessity because there is insufficient documentation th at the provider's plan is required to treat the Petitioner's disability. The Department notes that if the Petitioner is only capable of being moved but not moving himself, the treatments are not treating the Petitioner's medical condition. If he is capa ble of learning new movement patterns, the provider has not documented why 52 visits are necessary to reach these goals in addition to

other services and supports he receives. The Department contends the skills of a PT are not required to assist the Petitioner in learning to sit up from supine, to complete the bridging exercise, to improve range of motion and for trunk/ribcage alignment and mobility 2x/week. The Department further notes that it is not documented why the Petitioner needs to complete the bridging exercise or get in and out of bed in the way described by the provider.

In addition, the Department contends that the services do not meet MA's definition of medical necessity because they are duplicative of other services being provided to the Petitioner. Specifically, the Department notes that the provider's plan of care for treating the Petitioner's movement disorder does not appear to be different than the school therapy plan or the family and nursing plans to use the Petitioner's equipment as he is able. The Department also notes that the Petitioner is followed in school by a licensed PT who is required to change his school supports for movement when he is unable to keep up with peers within an age appropriate level. The school PT also works on lower extremity weight bearing, more independence with movement and endurance for activity. In the Department's view, this is duplicative of the services requested by this provider.

Lastly, the Department does not believe the requested services meet MA 's definition of medical necessity requiring that a service be the most appropriate supply or level of service that can safely and effectively be provided to the Petitioner and it is not the most cost-effective option. Specifically, the Department contends that the provider has not documented why the Petitioner is ready for intensive PT services to learn new movement skills. However, the Department does note that some level of PT services may be necessary in the Petitioner's home to assure carryover of movements skills in his natural environment and to determine when the Petitioner's health is stable enough to participate in intensive outpatient PT.

Petitioner's mother testified on his behalf. She stated that the Petitioner is battling scoliosis and has his back x-rayed every 6 months. She contends that spine straightening is not part of the school PT services but is a medically based therapy. She further testified that Petitioner receives indirect PT services from his family and nurse all by the time but they need guidance based on his changing needs. She asserts that the Petitioner's neurotransmitter disorder causes frequent changes in his muscle tone.

The Petitioner's mother agrees that they have equipment at home as noted by the Department in its summary. However, she testified that most of this equipment has not been used in a year because the Petitioner has outgrown it.

The Petitioner's mother disputes that the Petitioner is not ready for direct PT services and disputes that the PT requested is too intensive for the Petitioner at this time. The Petitioner did have a regression over the last year due to pneumonia and muscle weakness from botox injections. However, he has recovered from those conditions and is ready to work on strengthening muscles again. She contends the services of a PT are required to be able to integrate his multiple issues.

Based on the evidence presented, I conclude that the Petitioner has not, at this time, sufficiently rebutted the Department's arguments. The evidence does show that PT services can treat the Petitioner's disability. Specifically, there is general agreement that his motors skills regressed over the last year which demonstrates that he was making some functional progress in motor skills prior to his illness. However, I agree with the Department that the evidence presented does not establish that clinic-based PT services are required or are the most appropriate level of service at this time. The Petitioner currently has indirect PT services through his private duty nurse, school PT, school personnel, private PT and family. He has direct PT services at school 2 times/week. It is not clear, from the evidence presented, that the Petitioner requires an additional 52 visits at a PT clinic for direct services to make functional progress in his motor skills.

Many, though not all, of the goals of the provider's plan of care are duplicative of the school's IEP. Both the school IEP and the provider's plan of care focus on postural control, weight bearing and reaching for objects. Each contains additional goals as well with the school IEP focusing on skills related to the classroom and school setting and the provider's plan focusing on skills related to the home setting. The Petitioner's mother contends that postural control/spine straightening is a medical therapy that the school is not equipped to provide. Because the school does have IEP goals related to postural control, I must conclude that it is equipped to provide the therapy and that it is duplicative of the services in the provider's plan of care. There are some differences in the goals of the school and the provider related to the differences in the school and home setting. There is no evidence that the indirect services he receives from PT home programming, his private duty nurse, school PT and personnel and family cannot achieve progress toward those goals.

The Department approved a prior PA for 12 home programming and indicated in its written summary that additional home programming may be warranted. At the time of the hearing, the Petitioner had received only 4 of the 12 PT home visits which were not enough for the PT to be able to make any conclusions about the Petitioner's progress.

In the Department's summary in the instant case, it is cl ear that the Department is not shutting the door to future PT services for the Petitioner. It seems reasonable to evaluate the progress and the potential for additional progress through the 12 home visits approved in the February, 2012 and to submit a new PA request for appropriate services based on that evaluation.

CONCLUSIONS OF LAW

The Department properly denied the Petitioner's PA request for PT services.

THEREFORE, it is **ORDERED**

That the petition be, and hereby is, dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 5th day of September, 2012

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Debra Bursinger
Administrative Law Judge
Division of Hearings and Appeals

c: Division of Health Care Access And Accountability - email
Department of Health Services - email

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The preceding decision was sent to the following parties on September 5, 2012.

Division of Health Care Access And Accountability