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[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

MPA/142809

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 01, 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 (Physical Therapy), a telephone hearing was held on September 18, 2012.

The issue for determination is whether the Division of Health Care Access and Accountability erred in denying petitioner's prior authorization request for Physical Therapy.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

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

Written Appearance by: Pamela J. Hoffman, PT, DPT, MS  
Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a four year old resident of Marathon County.

2. On or about June 22, 2012, the petitioner's provider, Aspirus Wausau Hospital Therapies YMCA, requested prior authorization (PA) # [REDACTED] for MA coverage for two sessions of PT per week for 12 weeks commencing June 28, 2012. See Exhibit 4. Subsequently, the PA request was modified on July 6, 2012, allowing for four visits between June 14, 2012, and September 14, 2012. The provider sought to amend the PA request by requesting an additional 8 visits, and the amendment request was denied. See, Exhibit 3.
3. The Division denied the prior authorization request on July 19, 2012, because it did not find that the requested PT services met the medical necessity requirements of the Forward health (MA) program, and concluded that petitioner's provider had not documented gross motor skill regression and/or changes in those skills. Exhibit 3.
4. The petitioner's diagnoses are chromosome abnormality (2q33.1 microdeletion syndrome), repaired cleft palate and speech/language disorder. Due to his conditions, he has global developmental delays, poor tone and muscle strength throughout his body, and his motor planning is poor.
5. The petitioner received Birth to Three services. Thereafter, he began receiving services through the D.C. Everest Area School District. These services included physical therapy (PT), occupational therapy, and speech therapy services. The petitioner's Individualized Education Program (IEP) indicates that petitioner receives PT services weekly for 30 minutes through the school district.
6. The school district did not offer PT to the petitioner over the summer months of 2012, as part of an extended school year or through his IEP.
7. The petitioner's PA was requested due to concerns regarding the petitioner's problems of low tone and muscle weakness, gait and balance instability, and stair negotiation. The PA request indicated petitioner's functional limitations as difficulty ambulating over curbs, getting in/out of bed and tub, and frequent falls.
8. The provider's goals in the PA request for the petitioner during the summer of 2012 were: a) negotiate 5-7" curb without loss of balance 90% of the time; b) step over tub without loss of balance 90% of the time; c) transfer in and out of bed; and d) improve motor skills by 6-12 months per Peabody. Exhibit 4.
9. The petitioner's school physical therapist was previously provided on an interim basis, and at the time of hearing petitioner's mother had not met the new physical therapist. Exhibit 4. Petitioner's mother testified that during previous school PT sessions, petitioner had been working on stair climbing and jumping.

### DISCUSSION

Physical therapy (PT) is an MA-covered service, subject to prior authorization after the first 35 treatment days per spell of illness. Wis. Admin. Code §DHS 107.16(1)(a), (2)(a). In determining whether to approve PT services, the Division must consider the generic prior authorization review criteria listed at Wis. Admin. Code §DHS 107.02(3)(e). Those criteria include the requirement that the requested service be medically necessary, that there are not less expensive alternative services available, and that other available services are being effectively and appropriately used. *Id.*, (e)1,6,7.

Wisconsin's medical assistance (MA) program provides payment for a variety of covered services to state residents. Certain services require pre-authorization (PA) from the Department of Health Services (DHS) before payment can be made to the health care provider furnishing those services, *Wis. Admin. Code* §DHS 107.02(3)(a).

Like most public assistance benefits, the initial burden of demonstrating eligibility for any particular benefit or program falls on the applicant, *Gonwa v. Department of Health and Family Services*, 2003 WI

App 152, 265 Wis.2d 913, 668 N.W.2d 122 (Ct.App.2003). Thus, DHS has issued a detailed set of rules regarding the material that must accompany a PA request. *Wis. Admin. Code* § DHS 107.02(3)(d).

The petitioner's PA request indicated four goals to be met in the requested PT sessions. Finding of Fact #8 above.

The requirement that the applicant provide "justification" for the provision of the service for which he or she has sought a PA, sets forth the conditions that the applicant must meet and establishes the PA requirement itself. Accordingly, *Wis. Admin. Code* § DHS 107.16(1)(a) defines covered physical therapy services as:

those medically necessary modalities, procedures and evaluations enumerated in pars. (b) to (d), when prescribed by a physician and performed by a qualified physical therapist (PT) or a certified physical therapy assistant under the direct, immediate, on-premises supervision of a physical therapist.

While in no way denigrating petitioner's and his mother's struggles to afford him as normal a life as possible, the state's medical assistance plan is intended to provide continuing therapy in situations where measurable progress can be demonstrated and the medical necessity of the requested PT has been clearly established by the petitioner. Petitioner's provider has unfortunately failed to supply the necessary documentation to demonstrate the specific need for the requested services, any details of a home exercise program, and/or the status of petitioner's IEP plan goals through his school. As such I cannot conclude that the petitioner has met his initial burden of proof to demonstrate eligibility for a portion of the requested physical therapy services as required by Gonwa v. Department of Health and Family Services.

A covered service is "medically necessary when it 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;
  2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider and the setting in which the service is provided;
  3. Is appropriate with regard to generally accepted standards of medical practice;
  4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
  5. Is of proven medical value or usefulness and, consistent with s. HFS 107.035, is not experimental in nature;
  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. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, 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.

*Wis. Admin. Code §DHS 101.03(96m).*

The respondent concludes that:

...the skills of a physical therapist cannot be determined to be required on a twice weekly or weekly basis for PT services....based upon: (1) there is no evidence that the member's gross motor skills have regressed as a result of PT serviced provided in the school; (2) there is no evidence in the PA request that the member's gross motor skill change on a weekly basis that requires the weekly interventions of a therapist; and, (3) outpatient PT services are a duplication of a unique and innovative home program..."

Exhibit 3. Petitioner's mother testified that she felt that even one PT session per week would be onerous for petitioner; she felt that once every other week would be more appropriate.

In the instant case, the respondent initially approved (per modification) four PT visits to allow the provider to advise the petitioner's caregivers regarding a home program for the summer months. I find that the respondent correctly modified the petitioner's PA request, correctly denied the requested PA amendment, and that the petitioner has not established the medical necessity for any PT sessions beyond the four that were initially approved.

I note to the petitioner that nothing in this decision precludes the petitioner from seeking a new prior authorization. As noted above, it will be imperative that petitioner's provider address the respondent's concerns regarding lack of documentation supporting the PA request in any new application.

### **CONCLUSIONS OF LAW**

1. The Department correctly modified the petitioner's June, 2012, prior authorization request for 24 sessions of physical therapy during the summer of 2012.
2. The Department correctly denied the petitioner's July, 2012, prior authorization amendment request for 8 sessions of physical therapy during the summer of 2012.

**THEREFORE, it is**

**ORDERED**

The petition for review herein be and the same is hereby 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 served and 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, 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 Madison,  
Wisconsin, this 6th day of November, 2012

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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 November 6, 2012.

Division of Health Care Access And Accountability