



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

In the Matter of



DECISION

MPA/142810

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 (Speech/Language Therapy), a hearing was held on September 18, 2012, at Wausau, Wisconsin.

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

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

Written Appearance by: Patricia Willis, MST, CCC-SLP
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 15, 2012, the petitioner's provider, Aspirus Wausau Hospital Therapies YMCA, requested prior authorization (PA) # [REDACTED] for MA coverage for one session of speech/language therapy (SLT) per week for 12 weeks commencing June 14, 2012. See Exhibit B2.
3. The Division denied the prior authorization request on July 9, 2012, because it did not find that the requested SLT services met the medical necessity requirements of the Forward health (MA) program, and concluded that petitioner's provider had not documented the need for private SLT, in addition to the school SLT services provided during the school year. Exhibit B2.
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, and does not currently use any functional speech. Petitioner utilizes a nonverbal communication system including from sign language, AAC boards, and body language. Exhibit B3.
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, occupational therapy, and speech therapy services. The petitioner's IEP indicates that petitioner received SLT services weekly, and that extended school year services for SLT were not recommended by the school district on the petitioner's Individualized Education Program (IEP) .
6. The petitioner's SLT PA was requested due to concerns regarding the petitioner's mixed expressive-receptive language disorder secondary to the microdeletion chromosomal disorder, and due to his history of repaired cleft palate. Exhibit B3.
7. The provider's goals in the PA request for the petitioner during the summer of 2012 were: a) Therapist will use total communication development utilizing modeling, expansion, cueing hierarchies, AAC development, to facilitate skills; and b) all goals will be reinforced with carry-over and home program activities. Exhibit B3.
8. On June 26, 2012, respondent requested further information from petitioner's provider. Petitioner's provider responded on June 28, 2012. Exhibit B3.

DISCUSSION

Speech and language therapy is an MA-covered service, subject to prior authorization after the first 35 treatment days. Wis. Adm. Code § DHS 107.18(2). In determining whether to approve such a therapy request, the Bureau employs the generic prior authorization criteria found at § DHS 107.02(3)(e). Those criteria include the requirements that a service be medical necessary, appropriate, and an effective use of available services. "Medically necessary" services are those "required to prevent, identify or treat a recipient's illness, injury, or disability. Wis. Adm. Code § DHS 101.03(96m)(a).

Included in the definition of "medically necessary" at § DHS 101.03 (96m)(b) are the requirements that services be of proven medical value or usefulness, that services not be duplicative of other services, and that services be cost effective when compared to alternative services accessible to the recipient. When speech therapy is requested for a school age child in addition to therapy provided by the school system, the request must substantiate the medical necessity of the additional therapy as well as the procedure for coordination of the therapies. Prior Authorization Guidelines Manual, Speech Therapy, page 113.001.02. It is up to the provider to justify the provision of the service. Wis. Adm. Code § DHS 107.02(3)(d)6.

During the fair hearing process, it is generally accepted that the state or county agency, as the party which has taken the action appealed from bears the burden of proof of the propriety of that action. *See State v. Hanson*, 98 Wis.2d 80, 295 N.W.2d 209 (Ct.App.1980). Like most public assistance benefits, however, the initial burden of demonstrating eligibility for any particular benefit or program at the operational stage

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). In other words, it was petitione r’s burden to demonstrate that he qualified for the requested continued speech and language services.

An applicant will need to demonstrate that the procedure for which he or she seeks approval is “medically necessary.” A “medically necessary” service is

[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;

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 crux of the Division’s denial of petitioner’s request is that the petitioner’s provider has not provided sufficient documentation to establish the need for summer SLT services beyond those provided during the school year. Specifically, the respondent charges that:

...the school information showed member demonstrated minimal to satisfactory ability to complete tasks in the school SLP [speech and language pathologist] progress notes this past quarter, the school staff documented the ability to provide the member with assistive technology services or devices ..., no objective testing was submitted showing a change in language skills, and no discharge summary was submitted from summer therapy completed last summer indicating that member was able to significantly advance skills due to summer therapy. ... There appeared to be no change in status that would support fee-for-service speech therapy sessions as medically necessary over the summer months, given the goal focus contained skills that could be reinforced in the home setting as well.

Exhibit B2.

Petitioner’s mother testified that due to the relatively small number of people with petitioner’s diagnosis, prognosis is difficult to determine. She stated that SLT has been vital to her son, and noted that petitioner’s IEP is transitioning to alternative communication. She stated that her goal for her son would be to work on decreasing his frustration and increase his ability to communicate with others around him.

The question to be determined by the MA program was not just whether some problems are present, but why the specific skill of a private SLP is medically required for one session per week for 12 weeks. The

MA definition of medical necessity requires that services provided be basic and necessary. It is the responsibility of the petitioner's provider to establish medical necessity through the application and associated documentation. I agree with the respondent that the SLT provider was unable to establish evidence to convincingly establish the medical necessity of private speech and language therapy, in addition to the therapy provided during the school year. The MA program is not required to cover all of the services that a recipient or his parent would like to have him receive, only those that meet the MA program definition of medical necessity. I further note that MA is meant to provide basic services at a reasonable cost to a large number of persons and is the payer of last resort.

In reviewing the petitioner's submissions regarding the instant PA request, I agree with respondent's assessment that while those evaluations, school records, and medical reports are helpful in understanding petitioner's medical problems, those documents provide scant information arguing that private speech and language therapy is medically necessary for the petitioner.

It is the responsibility of the fee-for service provider to justify MA coverage of the service to the Division. The fee-for-service provider has not established the medical necessity of SLT in addition to the SLT received through the school speech therapist. While the petitioner's parent's efforts and desire for the petitioner to achieve as much progress as possible in his speech and language skills is commendable, the petitioner has not established that the requested private SLT is medically necessary. Accordingly, for the above reasons, I conclude that the Department correctly denied the petitioner's prior authorization (PA) request for once weekly individual private speech therapy for 12 weeks.

CONCLUSIONS OF LAW

The Department correctly denied the petitioner's prior authorization (PA) request for once weekly individual private speech therapy for 12 weeks.

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

Peter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on November 6, 2012.

Division of Health Care Access And Accountability