



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MPA/142814

PRELIMINARY RECITALS

Pursuant to a petition filed August 1, 2012, under Wis. Stat., §49.45(5), to review a decision by the Division of Health Care Access and Accountability (DHCAA) to deny Medical Assistance (MA) authorization for speech therapy (ST), a hearing was held on September 26, 2012, by telephone. A hearing set for August 31, 2012 was rescheduled at the petitioner's request.

The issue for determination is whether the requested ST has been shown to be medically necessary.

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Written submission of Patricia Willis, ST Consultant

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is an eight-year-old resident of Outagamie County who receives MA.
2. Petitioner has cerebral palsy. On May 17, 2012, Cerebral Palsy, Inc. requested authorization for twice per week ST for 26 weeks, PA no. [REDACTED]. After contacts between the agency and the provider, the DHCAA denied the requested by a notice dated July 25, 2012.
3. The request was for both swallow therapy and communication therapy. It was the tenth such request for therapy made on petitioner's behalf. Previously the DHCAA approved 164 sessions of communication therapy, 164 session of swallow therapy, and 39 sessions of therapy for

training to utilize a speech generating device following authorization of such a device in May, 2010.

4. When the speech generating device was requested it was noted that there had been successful trials at home and in school. Petitioner receives ST at school during the school year; there is nothing in the request suggesting coordination between the private and school therapists.
5. Petitioner's provider requested authorization for swallow therapy in 2011 following a new swallow study done in March, 2011. The request was denied, and the denial was upheld in Fair Hearing decision no. MPA-44/133499 (August 8, 2011), with a finding that petitioner has not improved despite substantial prior swallow therapy, and that the new swallow study did not support continued therapy. No new swallow study has been submitted with the current request, and the goals in the current request are essentially the same as in the request denied in 2011.
6. School therapy continues to work on communication, particularly with the speech generating device.

DISCUSSION

Speech and language therapy is an MA-covered service, subject to prior authorization after the first 35 treatment days. Wis. Admin. 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. Included in the definition of "medically necessary" at §DHS 101.03(96m) are the requirements 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 113.001.03. It is up to the provider to justify the provision of the service. §DHS 107.02(3)(d)6.

Prior hearing decisions have held consistently that where speech therapy is provided in school, it would not be cost effective for MA to cover private therapy. If the private therapy covers a situation that school therapy does not address, it has been found that the services are not duplicative. See, for example, Decision no. MPA-48/16180, dated August 21, 1997, where the evidence showed that the petitioner had a unique oral deficiency that the school therapist was not trained to address. Also see no. MPA-51/41838 (11-18-99), where the school therapist was working on building vocabulary while the private therapist was working on the physical process of vocalizing sounds.

In addition, denial of a request is appropriate if the person has not shown an ability to generalize the skills learned in therapy to other environments. Wis. Admin. Code, §DHS 107.18(3)(e). In other words, the therapy must lead to improvement in the person's skills.

With regard to the swallow therapy, the issue essentially was covered in 2011. At that time a new study was done, a request was made for continued therapy, the DHCAA denied the request, and a fair hearing decision upheld the denial. The current request describes the same goals and shows petitioner to be at essentially the same status as in 2011. The provider thus has not shown any basis for continued ST intervention for swallow therapy.

With regard to the communication therapy, petitioner had a speech generating device authorized in 2010 along with 39 sessions for training. At the time all the information from the provider and family showed tremendous enthusiasm at petitioner's ability to use the device and the carry over to general use in both

home and school. Now two years later additional ST is requested because there are problems with using the device.

I cannot find a basis for granting substantially more ST to train petitioner and her family to use the device. The training already was done. If I purchase a device that includes training, and after the training is complete I have trouble using the device, I return to the trainer and explain that the training was insufficient. I do not ask a third party to pay for more training. It is troubling that despite the glowing reviews offered when the device was being recommended for purchase, it turns out now that the reviews were perhaps a little exaggerated. I see no reason for the MA program to correct those errors.

Furthermore, even if petitioner's parent needs additional help in re-programming the machine to adapt to petitioner's maturation with it, I cannot see why 26 sessions of ST are needed to show the parent how to do that. It seems that one session of what is essentially computer programming advice would be sufficient. It also would appear that such skills are clearly within the parameters of school ST.

Finally, I note that nothing in the prior authorization requests suggests coordination between the school therapist and the private therapist, and there is no evidence that the school therapist cannot handle the goals requested here.

CONCLUSIONS OF LAW

The requested therapy services have not been shown to be medically necessary as defined by state law.

THEREFORE, it is **ORDERED**

That 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 19th day of November, 2012

\sNancy J. Gagnon
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 19, 2012.

Division of Health Care Access And Accountability