



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MPA/142852

PRELIMINARY RECITALS

Pursuant to a petition filed July 26, 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 telephone hearing was held on September 20, 2012.

The issue for determination is whether the Division of Health Care Access and Accountability correctly modified petitioner's request for prior authorization of physical therapy services by reducing the number and frequency of the authorized sessions.

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

By: Pamela J. Hoffman, PT, MPT, 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 three year old resident of Milwaukee County and is certified for MA.

2. On or around May 30, 2012, the petitioner's provider, The Center for Blind & Visually Impaired Children, requested prior authorization (PA) for MA coverage of Physical Therapy (PT) services twice weekly for 26 weeks in PA request # [REDACTED]
3. The Division modified the PA request on June 20, 2012, because the requested service did not meet the medical necessity standard of the MA program.
4. The petitioner has not received a definitive diagnosis to date; medical records indicated noted problems including prematurity, hypotonia, bronchopulmonary dysplasia, torticollis, megalopapilla (left eye), plagiocephaly, hydronephrosis, as well as swallowing and feeding problems.

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:
 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. The respondent posits that that time has come.

Pamela Hoffman, writing for the respondent, succinctly set forth the respondent's position as follows:

ForwardHealth finds the skills of a physical therapist cannot be determined to be required on a twice weekly basis for PT services based upon: (1) lack of documentation regarding the specific skill used by the provider that only a physical therapist can perform safely and must be performed twice weekly; (2) there is not evidence in the PA request that the

member's gross motor skills change on a twice weekly basis that requires the twice weekly interventions of a therapist; (3) there is strong evidence that children, once they learn how to walk on level ground and can climb on and off age appropriate furniture and can get down to and up off the floor and are interested in exploring their environment will continue to develop their gross motor skills and be able to jump, hop, skip, ride a tricycle, have better endurance for going up and down stairs...when they are physically able to accomplish those tasks if it is an expectation they perform those skills in their natural environment and they are trying to keep up with their peers and if they feel safe; and (4) it appears as if the goals the provider has designed for the member can be met with an HEP that is designed to motivate the member to move and results in overall improvement in strength and endurance.

Exhibit 3.

The respondent acknowledges that petitioner has made great progress as a result of PT services rendered to date, but maintains, as noted above, that petitioner has reached a point where skilled services of a physical therapist twice weekly are no longer warranted under the definition of medically necessary.

By contrast, petitioner's physical therapist, Ann Roenke, testified that petitioner is at a very critical juncture in her progression, and therefore needs to maintain the physical therapy regimen as requested. Ms. Roenke conceded that she understands respondent's position, but argued that the progress to date has not reached a culminating point, whereby petitioner's physical therapy needs have decreased or plateaued. For instance, she noted that petitioner is now dropping her arms, but still holds in her thoracic spine. Unfortunately, petitioner has failed to demonstrate the nexus between how petitioner presents from a medical standpoint and the need for twice weekly physical therapy.

The respondent has presented sufficient grounds to establish that it properly modified the PA request for physical therapy. The petitioner's provider, while arguing persuasively on petitioner's behalf, has not provided substantiated evidence that the respondent has interpreted this request incorrectly. The respondent conceded that the petitioner has achieved "great" progress to date, but the real thrust of its argument lies in the following statement:

The progress the member has made has advanced her skill level to a skill level that no longer requires the intensity of treatment the provider has requested, but is more effectively managed by a daily HEP that encourages active movement...

Exhibit 3, page 4. The petitioner's representatives have not addressed this position directly, have not demonstrated that twice weekly sessions are required/once weekly sessions would be insufficient, and as such have failed to establish that the respondent erred its determination here. I conclude that the PA request, as modified, is supported by the written testimony of the respondent.

CONCLUSIONS OF LAW

The respondent correctly modified the petitioner's prior authorization request for physical therapy services because the petitioner failed to establish the medical necessity of those requested services.

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 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 9th day of October, 2012

Peter W. 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 October 9, 2012.

Division of Health Care Access And Accountability