



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of



DECISION

MPA/142890

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 03, 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 (DHCAA) in regard to Medical Assistance, a telephonic hearing was held on August 28, 2012, at Green Bay, Wisconsin.

The petitioner's mother, [REDACTED] represented 8 year old [REDACTED] at that hearing. In addition, petitioner's therapist, Lisa Olson, appeared and testified at the hearing. During that hearing, petitioner's representative requested that the record be held open for documents to be submitted to the Division of Hearings and Appeals, and then for those documents to be sent to the Division of Health Care Access and Accountability (DHCAA) for a reconsideration decision with an opportunity for a reply by Ms. [REDACTED]

This Administrative Law Judge (ALJ) sent a September 16, 2012 cover letter to Ms. Willis at the Division of Health Care Access and Accountability (DHCAA) with a copy of the following documents: a) a four page September 4, 2012 letter by SLP Lisa Olson responding to Ms. Willis' August 17, 2012 denial summary; b) a July 9, 2010 letter by SLP Lisa Olson; c) a December 15, 2011 Psychological Evaluation by WEAP psychologist, Dr. Glen Sallows; d) an August 20, 2012 letter by West De Pere Superintendent, John Zegers; e) an August 19, 2012 letter by one of petitioner's caregivers, Jean Zegers; f) an August 28, 2012 letter by therapist Melissa Barrette; g) an August 17, 2012 letter by Lisa Dillhunt; h) an August 28, 2012 letter by special education teacher, Carla Jo Schneider; i) an August 21, 2012 letter by special education aide, Susie Altamyer; j) an August 27, 2012 letter by petitioner's parents, Jim and [REDACTED] and k) an August 23, 2012 letter by special education aide, Stacey Watzlawick.

In that same letter, this ALJ requested that Ms. Willis review the many, enclosed copies of letters, and submit a detailed reconsideration summary to me at the Division of Hearings and Appeals by Tuesday, October 2, 2012 with a copy of that reconsideration summary letter to be sent to the petitioner's mother as her representative. The petitioner's representative requested and was granted until October 12, 2012 any response to Ms. Willis' reconsideration summary.

Ms. Willis sent a 9 page September 28, 2012 reconsideration summary to DHA and to petitioner's mother. In that detailed summary, DHCAA explained the many reasons why DHCAA continued to deny the request for speech therapy services during the summer of 2012. The petitioner's representative did not submit any response to that reconsideration by October 12, 2012 or even by the date of this decision.

The issue for determination is whether the Department correctly denied the petitioner's prior authorization (PA) request for 28 sessions of individual speech therapy during the summer of 2012.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Representative:

[REDACTED] mother  
[REDACTED]

Respondent:

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

By: Patricia Willis, speech language consultant  
Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

Gary M. Wolkstein  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is an 8 year old resident of Brown County who resides with her family in a private residence. She is certified for MA benefits.
2. The petitioner is diagnosed with autism and significant speech delay.
3. The petitioner received speech and language therapy through the Birth to Three Program at Cerebral Palsy, Inc. from May, 2006 through April, 2007, when petitioner began school services. Private speech therapy was approved by MA for the petitioner during the summer of 2008.
4. The petitioner has received in-home intensive autism services since the summer of 2008.
5. The petitioner attends regular classes (with an aide) in second grade at the [REDACTED] in [REDACTED].
6. The petitioner is a student who receives speech and occupational therapies from the [REDACTED] pursuant to her Individualized Education Plan (IEP). The petitioner receives speech language therapy (SLT) about 90 minutes per week, and occupational therapy (OT) about 60 minutes per week.
7. The [REDACTED] did not approve or recommend in petitioner's IEP extended school year (ESY) speech therapy services for the petitioner during the summer of 2012.
8. The school staff recommended the purchase of an iPad for [REDACTED]. Based upon that recommendation, during the spring of 2012, petitioner's parents purchased an iPad with app of Proloquo2Go to be used as a speech generating device (SGD) to supplement [REDACTED]'s spoken language skills.

9. On or about May 22, 2012, Cerebral Palsy, Inc. (Green Bay), requested prior authorization (PA) on behalf of the petitioner for MA coverage of individual private speech & language therapy services (including both speech therapy and speech generating device training) from DHCAA at the frequency of twice per week for 14 weeks during the summer of 2012 at a requested cost of \$6,000. See Exhibit 2.
10. On July 23, 2012, the Division of Health Care Access and Accountability (DHCAA) sent a notice to the petitioner denying the prior authorization request for individual speech and language therapy because the submitted documentation did not establish the medical necessity of the requested private SLT during the summer of 2012. See Exhibit 1.
11. The record was held open for DHCAA to submit a reconsideration summary, and then for petitioner's representative to submit a response to that reconsideration regarding the medical necessity of the requested speech and language services during the summer of 2012. See above Preliminary Recitals.
12. The summer twice weekly SLT was requested to customize the iPad and app SGD to meet petitioner's communication needs, and to "ensure that the vocabulary is customized to support appropriate functional communication." Without customization, the "SGD will not be individualized to support language intervention . . . The SLP is necessary to establish functional vocabulary layout and array to support functional use . . .of language and access skills. September 4, 2012 letter of Lisa Olsen, MS, CCC-SLP.
13. After reviewing the petitioner's submissions, Department SLT consultant Patricia Willis issued a September 28, 2012 reconsideration summary to DHA and the petitioner's representative. In that reconsideration, DHCF continued to deny the requested speech language therapy during the summer of 2012 based upon lack of medical necessity due to the following factors: 1) the petitioner was unable to establish that the skills of a private SLT were required to set up, program, and teach the use of a commercially bought computer system (iPad) and communication app (Proloquo2Go ), when there is no evidence in the hearing record that the school SLT could not set up and "customize" that iPad and program for the petitioner for her speech therapy needs; 2) petitioner's new school IEP could allow for school staff time for the programming of her iPad and app as assistive communication devices, and petitioner's parents could request such iPad assistance and customization as part of petitioner's IEP plan of care; 3) the MA program does not cover provision of summer speech therapy sessions unless the requested SLT services meet the definition of medical necessity, and petitioner's provider has not established the medical necessity of private speech therapy or iPad training during the summer of 2011 when extended school SLP services were not provided; 4) the provider has not established or justified the medical necessity of the 2012 summer SLP request or why the additional skills of a private SLP over the summer months was medically necessary; 5) If the school had concern that [REDACTED] would not be able to maintain or recoup skills in the fall of 2012 due to not being in SLP therapy over the summer, the school would be obligated to provide extended school year (ESY) services of speech therapy services; 6) there was no documented change in petitioner's status over the 201 2 summer months that would have led to a decrease or setback in her speech and language status (would regress if SLP services were not provided over the summer months); and 7) there was no reliable evidence that the petitioner would regress if SLT services were not provided during the summer months.
14. The petitioner's representative did not submit to DHA any response to the Department's reconsideration as summarized in Finding of Fact #13 above.

## 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 petitioner’s burden to demonstrate that she qualified for the requested private speech and language services during the summer of 2012.

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 PA request is that petitioner has not established that private twice weekly speech and language therapy during the summer of 2012 was medically necessary when school SLT was not provided. The Department further argued that if medically necessary, the school was required to provide such continued SLT during the summer months. I have reviewed the petitioner's submissions from Dr. Glenn Sallow, SLP Lisa Olson and the other letters submitted by petitioner. See above Preliminary Recitals. In her September 4, 2012 letter, Ms. Olson argued that the skills of a speech language pathologist during the summer of 2012 were medically necessary because :

The SLT training is needed to establish a functional vocabulary layout and array to support functional use . . . of language and access skills. Parent education of advanced elicitation of SGD use as it relates to language abilities is necessary to ensure maximal functional use of the SGD to communicate across partners and contexts. SLP guidance/training/therapy sessions are necessary to support functional communicative use, whereas vendors/websites can be involved to work on training of SGD technical parameters, and not on guiding SGD use as it relates to language development, which is the role of the SLP. . . . There is a strong difference between technical workings of an SGD and appropriate AAC setup and customization of that equipment to be appropriate to meet the needs for communication and language development and use of the individual client.

While Ms. Olson's arguments are reasonable, such arguments did not refute the Department's response that the petitioner failed to establish with any reliable evidence that the school district SLT (and other computer personnel) were unable to provide the necessary iPad and app training and customization to appropriately prepare the petitioner for usage of that equipment as part of her IEP plan of care. As a result, those documents did not establish and justify why the skills of a twice weekly private speech language therapist (SLT) during the summer of 2012 was medically necessary. After reviewing the petitioner's submission s while the record was held open, DHCAA submitted its reconsideration summary which established why it continued to deny the petitioner's PA request for SLT during the summer of 201 2. See Finding of Fact #13 above. Petitioner's representative did not submit to DHA any response to the Department's reconsideration to refute DHCAA's reasons for continued PA denial.

It is the responsibility of the fee-for service provider to justify MA coverage of the service to the Division. The provider has not established such justification for the requested private SLT for the petitioner during the summer of 2012. While the petitioner's parents' desire for [REDACTED] to receive as much SLT as possible (and to incorporate the use of the iPad) to continue her progress is commendable, the petitioner has not established that the requested summer private SLT was medically necessary. Accordingly, for the above reasons, I conclude that the Department correctly denied the petitioner's prior authorization request for twice weekly individual private speech therapy for fourteen weeks during the summer months of 2012.

### **CONCLUSIONS OF LAW**

The Department correctly denied the petitioner's prior authorization (PA) request for 28 sessions of individual speech 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 December, 2012

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\sGary M. Wolkstein  
Administrative Law Judge  
Division of Hearings and Appeals



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

Division of Health Care Access And Accountability