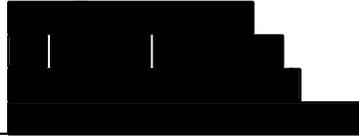




**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of



DECISION

MPA/142913

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 in regard to Medical Assistance, a telephone hearing was held on September 18, 2012. At the request of the petitioner, the record was held open to allow petitioner's provider to submit additional documentation. That documentation was received on September 25, 2012.

The issue for determination is whether the Division of Health Care Access and Accountability erred when it denied petitioner's prior authorization request for occupational 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: Mary Chucka, OTR
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 7 year-old a resident of Wood County; he is certified as eligible for MA.
2. The petitioner has been diagnosed with autism, which manifests itself in delays in self-care skills, coordination, socialization skills, and communication skills.
3. On June 11, 2012, the petitioner's fee-for-service provider submitted an initial PA Request, which was returned for additional documentation. On June 21, 2012, the petitioner's provider submitted further information regarding its prior authorization request for MA coverage of occupational therapy (OT) services, requesting a regimen of 2 times per week for 26 weeks at a cost of \$6,060.00.
4. The submissions by the provider at the time of the PA Request included little information on petitioner's progress over time in OT. In addition, petitioner had been receiving OT services in school; the instant PA request was intended to cover the summer months, and continue into the next school year. See, Exhibit #2.
5. On July 2, 2012, the Division denied the prior authorization request because the clinical documentation submitted was insufficient to establish that the requested service was medically necessary and therefore was not covered by the MA program.
6. The petitioner filed an appeal with the Division of Hearings & Appeals on August 3, 2012.
7. Petitioner's provider has provided no documentation of coordination of services between the private fee-for-service OT provider and the school-based OT provider.

DISCUSSION

MA coverage of occupational therapy (OT) is described in Wis. Admin. Code §DHS 107.17. MA will pay for 35 days of OT, without the need for authorization, following the onset of an illness that affects ability to perform daily living skills. Wis. Admin. Code § DHS 107.17(2)(b). Thereafter the Division of Health Care Access and Accountability (DHCAA) must prior authorize additional OT.

In reviewing a prior authorization (PA) request, the DHCAA must consider the general prior authorization 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 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;
 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; ...
 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.

If the person receives therapy in school, there must be documentation of why the additional therapy is needed, and documentation of coordination between the two therapists. Prior Authorization Guidelines Manual, p. 112.001.02, nos. 2 and 3.

The DHCAA Consultant indicated that the instant PA Request was denied because the Consultant could not determine the medical necessity of the requested services, asserting that the fee-for-service provider evaluation was too vague to form a reliable reference point for the child's quantifiable baseline skills. In addition, the Consultant found that the documentation submitted by petitioner's provider did not provide sufficient additional subsequent objective measurements of functional skills sufficient to identify how the child has progressed towards achievement of his goals. See, Exhibit #3.

Petitioner's mother testified that petitioner has shown significant improvement. She produced an additional letter from her son's provider supporting her testimony to this effect. See, Exhibit #4.

But, upon direct questioning by the administrative law judge about the coordination of service regimens between the fee-for-service OT provider and the school-based services OT provider, the petitioner's mother could not provide any evidence of any cooperation or coordination of regimens between these two separate OT providers. The record was held open for 10 days for the petitioner to provide a letter from the OT provider describing the coordination of services and the regimen of OT it provides to the petitioner.

A letter from the petitioner's fee-for-service provider was received in the open records period. Unfortunately, the only reference to coordination of services was a single telephone conversation between the fee-for-service OT provider and the school-based services OT provider, and a list of goals. I note that there does appear to be a difference in goals between the two providers, though the school-based OT provider's goals are simply summarized as "focusing on completing academic skills and visual motor skills." See, Exhibit #4. Without an Individualized Education Plan (IEP), it is difficult to reach any substantive conclusions as to whether there is any duplication of services. Lack of documented coordination of services exacerbates this problem.

Fee-for-service OT provider Elizabeth J.S. Laswell, OTR, re-asserts in Exhibit #4 her opinion of the petitioner's condition and need for the OT services, but does not describe any coordination of services with the school-based OT service regimen that the boy is receiving. A partial IEP was provided to DHCAA¹, but that does not include any goals or information on whether those goals were met. In any event, aside from the noted telephone conversation, the record contains no other information regarding coordination of services. I find this significant, since the partial IEP specifies that:

...He is very independent in most school and classroom activities. He sits well & works independently in kindergarten. ...

...He does well with fine motor and handwriting activities and his skills are age appropriate. ...

... [REDACTED] scored within an acceptable range for a kindergartner on a gross motor test. ...

See, Exhibit #3.

¹ See, Exhibit #3. It is unclear from the record why only a partial IEP was sent to DHCAA, and it is unknown when the IEP was received by DHCAA. Facsimile record information printed at the top of the partial document shows a date of 5/22/2102, which is several days before the PA request was initially submitted.

The record before me demonstrates that the petitioner has emerging age-appropriate functional skills, which could impact the medical necessity of the services proposed under the instant PA request. Yet, there is no specific letter, nor any other documentation, of the coordination of the school-based OT with Ms. Laswell's proposed regimen. This defect is fatal to the instant claim for prior authorization, standing alone.

In petitioner's provider's response to DHCAA's request for further information supporting the PA request, petitioner's provider twice indicated that petitioner was not receiving other OT services, since he was off of school for the summer. However, this response ignores the fact that the requested services would be extending into the next school year, as well as the fact that coordination of services is required for authorization approval.

Therefore, I must agree with the DHCAA that the request at issue does not show the need for OT based upon the criteria for coverage. The key is that it is the provider's duty to show the need for the services. See, Wis. Admin. Code §DHS 107.02(3)(d)6. When a child is receiving services in school, there must be a showing that the school therapy is unable to address a specific deficit and that there is coordination between the school and private therapist.

In this case there is no substantive evidence of coordination between the therapists. Petitioner's mother should be aware that the Division of Hearings and Appeals has long accepted the basic premise that OT methods are essentially the same no matter the venue or goals. In other words, the difference between therapy focusing on school-related areas versus therapy focusing on home-related areas has been found to be indistinguishable for prior authorization purposes.

It appears that the provider may simply have been unaware of the specific requirements for OT authorization. She can file a new prior authorization request, but she should be aware of the need to show that petitioner has improved due to OT and can continue to improve, and that the proposed private OT regimen has been coordinated with the school-based OT regimen to address different functional needs. She would be well-served to establish a clear and documented relationship with the school's occupational therapist to demonstrate the requisite need for, and coordination of, separate regimens.

CONCLUSIONS OF LAW

The DHCAA correctly denied the requested OT because insufficient information was provided to show the benefit of the OT services and petitioner's need for additional services; and there is no evidence of a coordination of private and school-based OT regimens.

NOW, 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 7th day of November, 2012

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 7, 2012.

Division of Health Care Access And Accountability