



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]

DECISION

MPA/142947

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 07, 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 hearing was held on September 18, 2012, at Superior, Wisconsin.

The issue for determination is whether the petitioner is entitled to medical assistance reimbursement for Child/Adolescent Day Treatment (CADT).

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Petitioner's Representative:

[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Jo Ellen Crinion

Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner is a resident of Douglas County.

2. On May 15, 2012, the petitioner with his provider, Northwest Journey Superior, requested 280 hours of Child/Adolescent Day Treatment (CADT) over 13 weeks at a cost of \$22,400. The Division of Health Care Access and Accountability denied the request on June 16, 2012.
3. The petitioner is a seven-year-old boy diagnosed with oppositional-defiant disorder, attention-deficit/hyperactivity disorder, and a pervasive development disorder.
4. The petitioner's school determined that he did not meet the cutoff for services based upon a autism. Northwest Journeys evaluation indicated that he "might" meet the criteria for a pervasive development disorder. The psychiatrist who reviewed the case for them gave the petitioner's primary diagnosis as Asperger's, a pervasive development disorder.
5. The petitioner has trouble reading social situations and sharing, limited empathy, and obsessions about things such as superheroes. He is easily frustrated, enjoys things that spin, and seeks rigid structure and routine. He enjoys playing by himself more than playing with peers. He finds it difficult to read social situations and modulate his behavior, which has led to wildly inappropriate behavior or comments.
6. At school, the petitioner has hit, kicked, punched, sworn at and threatened physical harm to his peers and staff. Talking about a teacher, he threatened to "fucking cut you into pieces until you bleed all over." He has had long tantrums, destroyed property, and gotten angry to the point of defecating in his pants.
7. The petitioner is described as intelligent and has an above-average IQ.
8. In early March 2012, the petitioner twice urinated in Northwest Journey's offices after being told to put a book away. He also removed his clothes and defecated in Northwest Journey's intervention room, smeared his feces on the wall, and wrote the word "dare" on it. He also physically threatened adults who intervened and made inappropriate comments described in the discussion portion of this decision to Northwest Journey's staff.
9. The petitioner was hospitalized for mental disturbances in January 2011 and later participated in outpatient mental health services.

### DISCUSSION

The petitioner and his provider, Northwest Journey Superior, seek reimbursement for Child/Adolescent Day Treatment Services. The Division of Health Care Access and Accountability denied the request because it is allegedly for a pervasive development disorder.

The Division indicates that this a "HealthCheck—Other Service" covered under Wis. Adm. Code, § DHS 107.22(4), a catch-all category applying to any service described in the definition of "medical assistance" found at 42 USC 1396d(a). When determining what law to apply, one looks first to the one that most specifically covers the situation. Day treatment mental health services for children under 18 are specifically covered by Wis. Adm. Code, Chapter DHS 40. I will rely upon that provision to determine whether the petitioner qualifies for services.

To qualify for services, a child "must have a primary psychiatry diagnosis of mental illness or severe emotional disorder." Wis. Adm. Code, § DHS 40.08(3)(a). *Mental illness* is defined as a "medically diagnosable mental health disorder which is severe in degree and which substantially diminishes a child's ability to carry out activities of daily living appropriate for the child's age." Wis. Adm. Code, § DHS 40.03(16). Each child is evaluated by a psychologist or psychiatrist and has a treatment plan approved by a program. Wis. Adm. Code, §§ DHS 40.08(4) and 40.09(2)(c). Like any medical assistance service, it must be medically necessary, cost-effective, and an effective and appropriate use of available services. It must also meet the "limitations imposed by pertinent...state...interpretations." Wis. Adm. Code § DHS 107.02(3)(e)1.,2.,3.,6., 7, and 9. Wis. Adm. Code.

"Medically necessary" is defined in Wis. Adm. Code § DHS 101.03(96m) as 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;
  4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
  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.

The pertinent interpretation of the requirements that must be met to receive adolescent day services is found at *Wisconsin Medicaid and BadgerCare Update* No. 96-20. It states:

Child/adolescent day treatment services are covered when the following are present:

- Verification that a HealthCheck screen has been performed by a valid HealthCheck screener dated not more than one year prior to the requested first date of service (DOS).
- A physician's prescription/order dated not more than one year prior to the requested first DOS.
- Evidence of an initial multidisciplinary assessment that includes all elements described in HFS 40.09, Wis. Admin. Code, including a mental status examination and a five-axis diagnosis.
- The individual meets one of the following criteria for a determination of "severely emotionally disturbed" (SED):
  - Is under age 21; emotional and behavioral problems are severe in degree; are expected to persist for at least one year; substantially interfere with the individual's functioning in his or her family, school, or community and with his or her ability to cope with the ordinary demands of life; and cause the individual to need services from two or more agencies or organizations that provide social services or treatment for mental health, juvenile justice, child welfare, special education, or health.
  - Substantially meets the criteria previously described for SED, except the severity of the emotional and behavioral problems have not yet substantially interfered with the individual's functioning but would likely do so without child/adolescent day treatment services.
  - Substantially meets the criteria for SED, except the individual has not yet received services from more than one system and in the judgment of the medical consultant, would be likely to do so if the intensity of treatment requested was not provided.
- A written multidisciplinary treatment plan signed by a psychiatrist or clinical psychologist as required in HFS 40.10, Wis. Admin. Code, that specifies the services that will be provided by the day treatment program provider, as well as coordination with the other agencies involved.

- Measurable goals and objectives that are consistent with the assessment conducted on the child and written in the multidisciplinary treatment plan.
- The intensity of services requested are justifiable based on the psychiatric assessment and the severity of the recipient's condition.

The petitioner is a seven-year-old boy who at various times has been diagnosed with oppositional-defiant disorder, attention-deficit/hyperactivity disorder, and pervasive development disorder. Treatment for pervasive development disorders is considered an habilitative as opposed a rehabilitative service and is not covered under 42 USC §1396d(a)(13). I note however, that the cited section does not specifically bar medical assistance payment for habilitative services; rather it states that MA does cover the following services, which include rehabilitation services:

other diagnostic, screening, preventive, and rehabilitative services, including any medical or remedial services (provided in a facility, a home, or other setting) recommended by a physician or other licensed practitioner of the healing arts within the scope of their practice under State law, for the maximum reduction of physical or mental disability and restoration of an individual to the best possible functional level;

Because the statute specifically indicates that rehabilitative services (including those needed for the reduction of a mental disability) are covered, mental health services are covered if the primary component is rehabilitative, even if it includes an habilitative component. This means that funding for the petitioner's CADT depends upon the primary cause of his problems.

The petitioner's behavior clearly warrants intervention. In early March 2012, while at North west Journey, he removed his clothes and urinated on the floor twice and defecated on it at least once. After defecating, he smeared feces on the wall and wrote the word "dare." He has also physically threatened adults who intervened and said the following to its staff:

1. "You want a piece of this?"
2. "The world will walk in my pee."
3. "You're a fucking piece of shit."
4. "Get the hell out of my way you fucking woman."
5. "What the fuck is wrong with you."

At school, he has hit, kicked, punched, sworn at, and threatened physical harm to his peers and staff. Talking about a teacher, he threatened to "fucking cut you into pieces until you bleed all over." He has had long tantrums, destroyed property, and gotten angry to the point of defecating in his pants. Despite these problems, he has an above-average IQ and is described as intelligent.

There has long been some evidence of a pervasive development disorder. In January 2011, he was hospitalized for a week at Miller-Dawn in Duluth for mental problems. His physician there, Dr. Swingen, diagnosed him with disruptive behavior disorder, NOS, and gave a provisional diagnosis of pervasive developmental disorder. Nevertheless, his school determined that he does not meet their criteria for autism services. Relying upon this, Northwest Journey ruled out a pervasive development disorder in its March 2012 report on proposed treatment. However, it indicated the following:

We are listing PDD, NOS as a possibility as [Petitioner] has trouble with social reciprocity, sharing, limited empathy, and obsessions (Superhero's [sic]). He does not liking [sic] th ings being out of control, sows low frustration tolerance, enjoys things that spin, and is rigidity with structure and routine. [Petitioner] enjoys playing by himself, more than playing with peers. He shows some mild sensory issues. We will assess if these symptoms are truly due to PDD, or if they are result of environmental factors.

Dr. Brett.A. Koplin, a psychiatrist from the Mayo Clinic who then reviewed the situation for Northwest Journey, wrote in an April 30, 2012, report:

In regard to diagnosis, I suspect that given concerns of social reciprocity, difficulty reading social situations and modulating his behavior as such, and wildly inappropriate behavior or comments at times, I think that [Petitioner] likely has ADHD as well as some anxiety, NOS, more around transitions or routines that may overlap significantly with Asperger's disorder concerns. I do not think he exhibits typical anxiety, but seems to have responded to at least initially to lower dose of Zoloft. I think as a lesser diagnosis, there is a component of oppositional behavior as well.

Based upon this, I find that the petitioner's diagnosis is primarily a pervasive development disorder. I do not have access to the reasoning behind the school's diagnosis, but it might not provide autism services to those with Asperger's, which denotes a higher-functioning form of a pervasive development disorder. Moreover, Northwest Journey's own report raised questions about the school's decision when it described all of the traits that the petitioner had that were consistent with a pervasive development disorder. That report then indicated that it would assess him further. It referred him to Dr. Koplin, who clearly indicated that the petitioner's primary diagnosis was a pervasive development disorder.

In making this decision, I in no way find that the petitioner does not require treatment. But I must follow medical assistance laws and rules, and those rules bar reimbursement for the treatment of a pervasive development disorder. The petitioner has the burden of proving by the preponderance of the credible evidence that he meets the criteria needed for medical assistance to fund his CADT. Under the evidence before me, he does not.

#### **CONCLUSIONS OF LAW**

The petitioner's CADT services may not be covered by medical assistance because they are primarily habilitative.

**THEREFORE, it is**

**ORDERED**

The petitioner's appeal is 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, Room 651, 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 16th day of October, 2012

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Michael D. O'Brien  
Administrative Law Judge  
Division of Hearings and Appeals

c: Department of Health Services - email  
[REDACTED] Northwest Journey - email  
Division of Health Care Access And Accountability, email - Health Care Access & Accountab



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The preceding decision was sent to the following parties on October 16, 2012.

Division of Health Care Access And Accountability  
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