



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

MPA/142970

PRELIMINARY RECITALS

Pursuant to a petition filed August 08, 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 25, 2012, at Sheboygan, Wisconsin.

The issue for determination is whether the agency properly denied the Petitioner's PA request for a speech evaluation.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Patricia Willis

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

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Sheboygan County. She is 6 years 11 months old.
2. Petitioner's diagnoses include prematurity, achondroplasia, macrocephaly, seizure disorder and Attention Deficit Hyperactivity Disorder (ADHD).

3. Petitioner is tested annually by a neuropsychologist. She has been approved for speech therapy sessions during the summer months, most recently during the summer of 2011.
4. Petitioner receives speech therapy 2x/week during the school year.
5. On February 8, 2012, the Petitioner's physician conducted a neuropsychological evaluation and recommended that speech therapy be continued for the summer months of 2012 in order to maximize progress and achieve functional independence.
6. The Petitioner has a school IEP effective August 30, 2012 – August 29, 2013. As part of the Petitioner's IEP, she receives two sessions of speech therapy each week for a total of 60 minutes of therapy/week. The Petitioner had a previous school IEP for the 2011-12 school year. The Sheboygan Area School District provides Extended School Year services if an individual has a risk of regression that could not be recouped in the fall without continuous therapy services over the summer months.
7. On June 26, 2012, a prior authorization request was submitted on behalf of the Petitioner by Rehab Resources, Inc. for a speech/hearing evaluation completed on April 25, 2012 at a cost of \$190.
8. On July 9, 2012, the agency denied the PA request.
9. Petitioner filed an appeal with Division of Hearings and Appeals on August 8, 2012.

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.

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 is the Petitioner's burden to demonstrate that she qualifies for the requested speech evaluation services.

The agency appeared via a written summary dated August 20, 2012 in which the agency explained the bases for its denial of the PA request. The agency argues that the evaluation did not meet the definition of medical necessity in Wis. Admin. Code § DHS 101.03(96m). A service is "medically necessary" when it is:

(a) Required to prevent, identify or treat a recipient's illness, injury or disability;

And

(b) Meets the following standards: . . .

5. Is of proven medical value or usefulness . . .
6. Is not duplicative with respect to other services being provided to the recipient . . .
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 agency also argues that the denial is proper based on Wis. Admin. Code § DHS 107.03 which discusses services that are not covered by MA including:

- (5) Procedures considered by the department to be obsolete, inaccurate, unreliable, ineffectual, unnecessary, imprudent or superfluous.

The agency contends that a private therapist should complete a screening process prior to an evaluation to identify current level of functioning, medical, and therapy history. It argues that a screening process would have indicated that speech therapy services were not necessary because there is no evidence of progress with previous speech therapy in the summer and because the Petitioner already receives sufficient speech therapy services. The agency noted that the Petitioner received therapy over the summer months in 2011 but the discharge summary did not address any of the goals submitted or focused on during those months. Improvement was attributed to medical adjustments. In April, 2012, the Petitioner was noted to be in the midst of a medical change and had been on five different medications to address difficulties with no success. The agency argues that the only progress noted since the summer therapy of 2011 was attributed to medication changes. Therefore, rehabilitation potential from therapy is not evident. The agency also notes that there was nothing in the evaluation that would not have been learned by reviewing the previous therapy history or the school IEP. There were no new goals established that advanced from the goals for 2011. Therefore, the agency concludes the evaluation was not necessary.

Further, the agency argues that because the Petitioner is in school, a consistent environment for establishing carryover on a daily basis is in place. The school has extended year services but did not recommend those services for the Petitioner. Others in the Petitioner's environment can safely and effectively supply the services as well.

In summary, the agency concludes that there is no substantial evidence that was presented with the PA request that the Petitioner would progress with therapy or regress due to a lack of services over the summer. Therefore, the speech evaluation was not necessary.

The Petitioner's mother testified on the Petitioner's behalf at the hearing. She argued that the Petitioner received speech therapy every summer except the summer of 2012. She noted that the Petitioner's neuropsychologist recommended the therapy. She further argues that the Petitioner's test scores are evidence that the Petitioner needed to be evaluated. Based on the neuropsychologist's recommendation, the Petitioner's mother contacted Rehab Resources and an evaluation was conducted. She felt that Rehab Resources should have known that a screening was necessary.

Based on the evidence presented, I conclude the agency is correct in its assertions that there is insufficient evidence presented with the PA request to determine that a speech evaluation was "medically necessary" for the Petitioner on April 25, 2012. The evidence does not demonstrate that the Petitioner's progress has changed sufficiently from the previous summer or school year to require a new evaluation. The evidence presented indicates that progress or improvement was related to medication adjustments.

Because the Petitioner has the burden of demonstrating that the service meets the criteria and there is insufficient evidence to demonstrate that the speech evaluation was "medically necessary" as defined in DHS 101.03(96m), I conclude that the agency properly denied the Petitioner's PA request.

CONCLUSIONS OF LAW

There is insufficient evidence to demonstrate that the speech evaluation was medically necessary. The agency properly denied the PA request.

THEREFORE, it is

ORDERED

That the petition be, and hereby 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, 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 Milwaukee,
Wisconsin, this 26th day of October, 2012

Debra Bursinger
Administrative Law Judge
Division of Hearings and Appeals

c: DHSADHCAA@wisconsin.gov, DHSADHCAA@wisconsin.gov - Health Care Access & Accountability



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The preceding decision was sent to the following parties on October 26, 2012.

Division of Health Care Access And Accountability