



FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

MPA/143218

PRELIMINARY RECITALS

Pursuant to a petition filed August 20, 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 17, 2012, at Neillsville, Wisconsin.

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

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
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 Clark County.

2. On May 10, 2012, the petitioner with his provider, Northwest Journey Wausau, requested 13 weeks of Child/Adolescent Day Treatment (CADT) at a cost of \$26,000. Northwest Journey did not submit any documentation until May 29, 2012. The Office of Inspector General received that documentation on June 4, 2012. It requested additional information on June 11, 2012, which Northwest Journey submitted on June 28, 2012. The Office of Inspector General denied the request on July 9, 2012.
3. Northwest Journey began providing CADT to the petitioner on May 10, 2012. It completed its initial assessment on May 14, 2012, and its individual and interagency treatment plan on May 15, 2012.
4. The petitioner is a 13-year-old boy diagnosed with an unspecified anxiety disorder, oppositional defiant disorder, and attention deficit/hyperactivity disorder.
5. The petitioner received CADT from Migisi Day Treatment from December 20, 2010, through August 19, 2011. He also received CADT once before then.
6. Northwest Journey provided the following explanation concerning why the petitioner requires day treatment:

Day Treatment Services are currently needed at this time as it is logically the next appropriate level of care for [the petitioner] as he continues his treatment in route to join the community after struggling with behaviors at school and in the community. [The petitioner] needs a highly structured environment to keep him from hurting himself and others, physically and verbally. Day treatment services are needed at this time to meet [the petitioner's] intensive needs while allowing him to remain in the least restrictive placement. Please see initial assessment, initial treatment plan, and admission summary for detailed description as to why a referral to day treatment services is made.
7. The petitioner refuses to perform household chores, has anger outbursts throughout the day, is often physically aggressive toward his younger brother and occasionally toward his father and friends. He is frequently verbally hostile toward his mother.
8. The petitioner was placed on court supervision for six months at the end of 2011 for stealing a backpack.
9. At the time of initial assessment for this therapy, the petitioner was described as mildly depressed.

DISCUSSION

The petitioner and his provider, Northwest Journey Superior, seek reimbursement for three months of Child/Adolescent Day Treatment Services at a cost of \$26,000. The Division of Health Care Access and Accountability denied the request primarily because the services were provided before the request was granted.

The Office of Inspector General indicates that this is a "HealthCheck—Other Service" covered under Wis. Admin. 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). Day treatment mental health services for children under 18 are more specifically covered by Wis. Admin. Code, Chapter DHS 40. To qualify for services, a child "must have a primary psychiatry diagnosis of mental illness or severe emotional disorder." Wis. Admin. 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. Admin. Code, § DHS 40.03(16). Each child is evaluated by a psychologist or psychiatrist and has a treatment plan approved by a program.

Wis. Admin. 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. Admin. Code § DHS 107.02(3)(e)1.,2.,3.,6., 7, and 9. Wis. Admin. Code.

"Medically necessary" is defined in Wis. Admin. 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.

Northwest Journey requested 13 weeks of CADT services for the petitioner at a cost of \$26,000 on May 10, 2012, the day he began receiving the services, but did not submit any documentation to the Office of Inspector General until June 4, 2012. That documentation included an initial assessment of the petitioner completed on May 14, 2012, and an individual and interagency treatment plan completed on May 15, 2012. On June 11, 2012, the Office of Inspector General asked Northwest Journey to explain why additional CADT is needed after the petitioner had nine months of the treatment less than a year earlier, what alternatives were considered, whether the petitioner's psychiatrist is recommending CADT, what the current status of the petitioner's medications is, and whether his mother asked that he be taken off from medications. Northwest Journey responded on June 28, 2012, and the Office of Inspector General denied the claim on July 9, 2012.

Wis. Admin. Code, § DHS 107.02(3)(c) states: "If prior authorization is not requested and obtained before a service requiring prior authorization is provided, reimbursement shall not be made except in extraordinary circumstances such as emergency cases where the department has given verbal authorization for a service." This rule is not absolute. Wis. Admin. Code, § DHS 106.03(4)(a), which is found in the chapter in the administrative code pertaining to the provider's rights and responsibilities, allows an exception to this general rule "[w]here the provider's initial request for prior authorization was denied and the denial was either rescinded in writing by the department or overruled by an administrative or judicial order."

This rule is needed because it can often take weeks or months for the Division to review requests for needed therapy. This especially creates problems if the request is for continuing or follow-up services and the lack of approval can interrupt ongoing treatment. In addition to the written rule, the Division, as a courtesy, generally accepts requests filed up to two weeks after a service has begun. Still, the preferred method is for the Division to review the request before services begin because it, unlike the Division of Hearings and Appeals, has medical training in the area under review that allows it to provide an expert opinion on whether the service is necessary. When reviewing a matter in which the services begin before being approved, Hearings and Appeals must look at all of the circumstances of the case.

The petitioner's primary problem is poor behavior. He refuses to take care of personal hygiene or do chores around his house. He verbally abuses his brother, parents, and friends. He frequently physically abuses his brother and occasionally his friends and father. He was placed on probation at the end of last year for stealing a backpack. But these problems do not justify going ahead with a program that costs \$26,000 before the Office of Inspector General has had a chance to review it, and there is even less justification for going ahead before any assessment or treatment plan was completed or any documentation was submitted. However belligerent the petitioner was, there is no evidence that his behavior rose to a level requiring police intervention or that it imperiled anyone's health or life. Nor, given the diagnosis that the petitioner was "mildly depressed," is there evidence that he required this therapy immediately to protect himself. He has received CADT twice before, including for nine months about a year ago, so he should not have begun this therapy without a thorough evaluation that considered alternatives. Moreover, this is not the first time that Northwest Journey has begun providing services

without first even attempting to obtain approval. As the Office of Inspector General points out, this occurred in *DHA Decision Nos. MPA 58/10823 and MPA 35/139624*. Since then, it has occurred in at least two more recent matters, *MPA/142947* and *MPA/142933*. The last of these matters was approved because of extenuating circumstances, but even there Northwest Journey could have submitted the evidence more quickly. Considering all of the circumstances surrounding the request in the current matter, I find that there were no extraordinary circumstances that justified beginning treatment before the Office of Inspector General had a reasonable amount of time to review it, and there certainly was no justification for beginning the therapy three weeks before even submitting a complete Prior Authorization Request.

CONCLUSIONS OF LAW

The Office of Inspector General correctly denied the petitioner's request for CADT because he began treatment before receiving approval for it.

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 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 2nd day of November, 2012

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



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on November 2, 2012.

Division of Health Care Access And Accountability
ginab@nwccg.com