FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

MPA/143232

PRELIMINARY RECITALS

Pursuant to a petition filed August 17, 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 (Occupational Therapy), a telephone hearing was held on September 18, 2012.

The issue for determination is whether the Division of Health Care Access and Accountability erred in denying petitioner's request for prior authorization of occupational therapy.

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
Written Appearance by: Pamela J. Hoffman, PT, DPT, MS
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 a four year old resident of Marathon County.

2. On or about July 5, 2012, the petitioner's provider, Aspirus Wausau Hospital Therapies YMCA, requested prior authorization (PA) # [redacted] for MA coverage for one session of occupational therapy (OT) per week for 12 weeks commencing June 25, 2012. See Exhibit C3.

3. The Division denied the prior authorization request on July 30, 2012, because it did not find that the requested SLT services met the medical necessity requirements of the Forward health (MA) program, and concluded that petitioner's provider had not documented the need for private OT, in addition to the school OT services provided during the school year. Exhibit C3.

4. The petitioner has been diagnosed with chromosome abnormality (2q33.1 microdeletion syndrome). Due to this condition, he has global developmental delays, and does not currently use any functional speech. Petitioner has proximal and distal upper extremity weakness, decreased core muscle strength and poor motor coordination. Exhibit C3.

5. The petitioner received Birth to Three services. Thereafter, he began receiving services through the D.C. Everest Area School District. These services included physical therapy, occupational therapy, and speech therapy services. The petitioner's IEP indicates that petitioner received OT services weekly per the petitioner's Individualized Education Program (IEP) .

6. The petitioner's OT PA was requested due to concerns regarding the petitioner's decreased coordination and strength, fine and gross motor delay, and impaired activities of daily living (ADL). Exhibit C3.

7. The provider's goals in the PA request for the petitioner during the summer of 2012 were: a) dealing with building proximal, core, and distal strengths through graded activity; (b) address motor planning and coordination, was well as sensory processing; and (3) address self-care skills. Exhibit C3.

8. On July 12, 2012, respondent requested further information from petitioner's provider. Petitioner's provider responded on July 18, 2012. Exhibit C3.

DISCUSSION

Occupational therapy is an MA-covered service, subject to prior authorization after the first 35 treatment days per spell of illness. Wis. Admin. Code §DHS 107.17(1),(2). In determining whether to approve OT services, the Division must consider the generic prior authorization review criteria listed at Wis. Admin. Code §DHS 107.02(3)(e). Those criteria include the requirement that the requested service be medically necessary, and that it not duplicate other available services. *Ibid.* To be medically necessary, a service must be required to treat a recipient's illness or disability. See Wis. Admin. Code §DHS 101.03(96m). OT can certainly be an appropriate service for dealing with the motor skills deficits that accompany the petitioner's diagnosis. See *Prior Authorization Guidelines Manual*, 112.001.

The respondent denied the request because the evaluation did not show the medical need for continued OT services during the summer months, given that petitioner receives comprehensive therapy services, including OT, during the school year. 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. The mere assertion, even of a doctor or clinician, that a person needs a specific service is not the same thing as demonstrating with factual evidence the nature of the limitations, measurements of such limits, and clinical evidence that establishes such services are in fact medically necessary as that term is defined by the MA Program, and as applied to the specific services sought.

The respondent argues that petitioner has received services in school that are meant to address the same issues that the private therapy is addressing. Petitioner's mother testified that she does not know how

much communication goes back and forth between the school and private OT providers, but she noted that they try to work on different goals. The Department has long held the position that school therapy and private therapy basically address the same deficits and use the same techniques. Thus for private therapy to be approved when school services are in place, there must be some deficit or deficits that the school therapist cannot address. The Department has refused to accept that the difference between school and private therapy can be that the school therapy addresses school concerns while the private therapy addresses home concerns. See Final Decision no. MPA-37/80183, dated February 16, 2007, which reaffirmed that analysis as it concerns speech therapy; the rules/policies for speech and occupational therapy are identical.

I conclude that the denial was appropriate. The petitioner's provider supplied little if any evidence of coordination between the school and private therapists. It is evident that both therapists have addressed petitioner's ADL's, with the similar goals of increasing his abilities to levels appropriate for his actual age.

As noted, the Department long ago determined that there is no practical difference between school goals and home goals. I note the statement from the private therapist in her response to the DHCAA questions while the request was being reviewed: "…intensive services are requested to maximize functional outcomes and to assist this child become more independent with daily self-care needs. " Obviously that is a worthy goal and every parent would seek to give a child the maximum, best services possible. However, MA is limited to providing necessary services, not the best services possible.

In this case, the DHCAA consultant denied the petitioner's PA request because the petitioner's provider failed to establish the medical necessity of the OT services. The respondent has convincingly argued valid reasons for why DHCAA continued to deny the petitioner's request for continued OT services due to lack of established medical necessity for those services. Specifically, respondent wrote that:

> A therapy evaluation must establish that a person has an inability to complete a functional task and then further identity the problem that interferes with greater efficiency. From these deficits, the therapist writes a plan of care to list what will be done in treatment to resolve these problems and improve function. This plan of care must include strategies and intervention techniques that cannot be done by others to justify why the services at a skilled level of care by a therapist are needed. … [t]he submitted PA request does not do that.

Exhibit C2.

The burden of proof was upon the petitioner and his provider to establish the medical necessity of the requested OT services. The petitioner and his provider have not met that burden. The petitioner's mother is commended for her strong advocacy on behalf of her son in attempting to obtain services to try to help her son with her many serious deficits . However, petitioner's mother and provider were unable to establish with any persuasive evidence that the respondent incorrectly determined that the petitioner and her provider failed to establish the medical necessity of the requested OT services. Accordingly, for the above reasons, I must conclude that the Division correctly denied the petitioner's July, 2012, prior authorization request for weekly occupational therapy services for 12 weeks.

CONCLUSIONS OF LAW

The Division correctly denied the petitioner's July, 2012, prior authorization request for occupational therapy services because the petitioner failed to establish the medical necessity of those requested services.

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 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 6, 2012.

Division of Health Care Access And Accountability