



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

In the Matter of

[REDACTED] Lakeview Hlth Ctr
[REDACTED]

DECISION

MPA/143644

PRELIMINARY RECITALS

Pursuant to a petition filed September 04, 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 November 08, 2012.

The issue for determination is whether respondent correctly denied petitioner's request for Prior Authorization of occupational therapy.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED] Lakeview Hlth Ctr
[REDACTED]

Respondent:

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

By: Tami Halasco

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 resident of La Crosse County. At the time of the prior authorization request at issue here, petitioner was a resident of [REDACTED]

2. Petitioner's diagnoses include, "dementia with behaviors, conduct disorder, insomnia, dysthymic disorder, chronic backache, PVD, venous insufficiency, hearing loss, CKD stage III, anemia, hypercholesterolemia, HTN, constipation, agitation, OA shoulders and hands, depressive disorder.
3. On or about June 14, 2012, prior authorization (PA) for occupational therapy (OT) was sought on petitioner's behalf. Exhibit 2.
4. On July 23, 2012, the PA request was denied due to "...the documentation submitted by your provider does not support medical necessity as defined in Wisconsin Administrative Code." Exhibit 2.

DISCUSSION

OT is covered by MA under Wis. Adm. Code §DHS 107.17. Generally OT is covered without need for prior authorization for 35 treatment days, per spell of illness. Wis. Adm. Code §DHS 107.17(2)(b). After that, prior authorization for additional treatment is necessary. If prior authorization is requested, it is the provider's responsibility to justify the need for the service. Wis. Adm. Code §DHS 107.02(3)(d)6. In reviewing a PA request the DHCAA must consider the general PA criteria found at §DHS 107.02(3) and the definition of "medical necessity" found at §DHS 101.03(96m). §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; ...
 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.

The DHCAA denied the request primarily because the evaluation did not show the medical need for the services of an occupational therapist in addition to services provided by nursing staff at petitioner's skilled nursing facility. The consultant noted that although the evaluation showed problems to be worked on, it did not identify why petitioner would need the services of an occupational therapist to accomplish the tasks. After reviewing the evidence, I have to agree with the DHCAA.

As the DHCAA's Occupational Therapy Consultant stated in her *Summary*, dated September 27, 2012:

In this case, the member was transferred to one skilled nursing facility from another nursing facility. She has a number of diagnoses, and requires assistance with her daily routine. In this standard a service must be 'required.' OT services are considered required using 'required' as the operative term in this standard. The question that may be presented to determine if this standard is met is: "Is the service required, or in other words, if the service is not provided, what consequences may result?" Again, the OIG reiterated the member had been a resident of a long term care facility. She was transferred to another long term care facility. Trained competent staff are available to provide the care and assistance she

needs. Additionally, PA requests for PT and ST services were submitted and approved. Given the provision of these services, a requirement for OT services is not found.

Exhibit 3, at p. 3.

The petitioner's therapist appeared at the hearing to explain the status of the patient, how therapy would improve her skills, and why petitioner was in need of specific occupational therapy. Her therapist did argue that her training and skills differed greatly from the skilled nursing facility staff, and that she intended to train petitioner's caregivers to provide continuation of care after the OT regimen was complete. Unfortunately, at the time of hearing, this therapist affirmed that she was unable to explain petitioner's current status, as she had not had any contact with her since June of 2012. She commented that she would not be able to say whether petitioner still needed the PA services at present, and would need to re-evaluate her. On this record, petitioner's need for the PA services is simply unclear. Without evidence of medical necessity, the PA cannot be approved.

Another decision of the Division of Hearings and Appeals aptly states what is required of a provider and highlights the deficiencies in this PA request:

“An effective proposal for ... therapy must follow a several step process. It must first determine the nature of the recipient's disability and the limitations that that disability imposes upon him. Second, it must set goals to help the recipient live with the disability. Third, it must develop a treatment plan that has a realistic chance of accomplishing the goals. Finally, to determine whether the therapy meets these criteria, the provider must perform tests that consistently and accurately measure performance. If the therapy does not meet these criteria, it fails the medically necessary test because it is not consistent with the recipient's symptoms or with treatment of the recipient's disability.”

DHA Case No. MPA-55/53461 (Wis. Div. Hearings Appeals July 29, 2001)(DHFS), at pp. 2-3.

The evidence provided does not clearly establish the medical necessity of this OT regimen; nor show that other less expensive and also appropriate treatments were not already addressing the deficits. In short, it is the provider's duty to show the baseline, improvements, and related goals of the new regimen, in specific, measurable ways. This provider has not done so. I will affirm the DHCAA Consultant's denial because I am unable to determine the objective need for the therapy and what results can be deemed to be successful.

Nothing in this Decision prevents the petitioner and her provider from submitting a new prior authorization request for ongoing occupational therapy that demonstrates that the regimen is consistent with her symptoms or with treatment of her disabilities.

CONCLUSIONS OF LAW

The provider failed to show the medical need for the requested OT services.

THEREFORE, it is **ORDERED**

That the petition for review 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 21st day of December, 2012

\sPeter McCombs
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 December 21, 2012.

Division of Health Care Access And Accountability