



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

In the Matter of

[REDACTED]

DECISION

MPA/143888

PRELIMINARY RECITALS

Pursuant to a petition filed September 18, 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 October 11, 2012. Petitioner was afforded time post-hearing to provide further documentation from her provider; two faxes were received and entered into evidence on November 12, 2012, as Exhibit 4 and Exhibit 5.

The issue for determination is whether the respondent erred when it modified a prior authorization request for physical therapy (PT).

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: Pamela J. Hoffman

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 4 year old resident of Dane County.
2. Petitioner has multiple diagnoses, including skeletal dysplasia, seizure disorder, chronic respiratory disease, congenital bronchomalacia, and is presently tracheostomy and ventilator dependent. He receives 30 minutes of PT per week in school and receives additional “direct service” 60 minutes per week. See, Exhibits 2 and 5.
3. On or about July 10, 2012, Meriter Hospital requested prior authorization for twice weekly PT for 24 weeks, PA no. [REDACTED]. By a letter dated July 31, 2012, the DHCAA approved the PA request, with modifications allowing for 6 visits to teach the petitioner’s family and other caregivers a home exercise program. Exhibit 2.
4. On their faces the school and private therapy goals are virtually the same. Both are addressing petitioner’s movement skills. The school therapist is working with petitioner on ambulation around the school and transfers. The private therapy is working on ambulation as well, particularly to improve petitioner’s endurance and use of the gait trainer.

DISCUSSION

Physical therapy is covered by MA under Wis. Adm. Code, §DHS 107.16. Generally it is covered without need for prior authorization (PA) for 35 treatment days, per spell of illness. Wis. Adm. Code, §DHS 107.16(2)(b). After that, PA for additional treatment is necessary. If PA is requested, it is the provider’s responsibility to justify the need for the service. Wis. Adm. Code, §DHS 107.02(3)(d)6. If the person receives therapy in school or from another private therapist, there must be documentation of why the additional therapy is needed and coordination between the therapists. Prior Authorization Guidelines Manual, p. 111.001.02, no. 3.

In reviewing a PA request the DHCAA (now known as the Office of the Inspector General) 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. HFS 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 interprets the code provisions to mean that a person must continue to improve for therapy to continue, specifically to increase the ability to do activities of daily living. In addition, at some point the therapy program should be carried over to the home, without the need for professional intervention. Finally the MA program will not pay for therapy if the person already receives therapy from a different provider, with one exception.

The reason for the modification of services in this case is that petitioner is receiving services in school that are meant to address the same issues that the private therapy is addressing. Post-hearing, petitioner submitted correspondence from his physical therapist, who unfortunately did not provide a distinction between the services provided in the two therapy sessions. Instead, the provider pointedly argued that additional time was necessary to avoid regression. 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 physical therapy are identical.

I conclude that the modification was appropriate. I am particularly concerned that there appears to be little if any coordination between the school and private therapists. See, Exhibit 4. I am encouraged by and applaud petitioner's mother's initiative in this regard, and note that petitioner's providers will need to make a concerted effort to identify areas that one therapist is unable to address which the other therapist can then focus on; the duplication of services is simply not allowed. It is evident that both therapists are focusing on ambulation skills and transfers, and I find that the determination to modify the services to allow for training regarding a home exercise program is appropriate here.

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: "Weekly outpatient physical therapy is necessary for [REDACTED] to continue to progress toward his goal of walking." Exhibit 5. 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. Petitioner is receiving PT in school, I conclude that respondent properly determined that those services, in conjunction with the modified PA request PT, are providing the necessary level of assistance.

CONCLUSIONS OF LAW

The DHCAA correctly modified the requested PT services because petitioner is receiving PT in school and there is not a sufficient showing of a need for private services in coordination with the school services.

THEREFORE, it is

ORDERED

That 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 19th day of November, 2012

\sPeter 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 19, 2012.

Division of Health Care Access And Accountability