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[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

MPA/143986

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 10, 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 31, 2012, at Wisconsin Rapids, Wisconsin.

The issue for determination is whether the Department erred in its denial of prior authorization request (# [REDACTED]) for occupational therapy services for petitioner.

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: Mary Chucka, OTR (in writing)  
Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Wood County.
2. Petitioner has a diagnosis of congenital diplegia.

3. Petitioner had received approval of at least five pervious PA requests for OT services going back to 2009.
4. Therapies Plus submitted a request for prior authorization ("PA") for occupational therapy ("OT") services on June 27, 2012. The PA request sought payment (\$2,970) for one visit per week for 26 weeks.
5. The Department denied the request on August 23, 2012.

### DISCUSSION

The Division may only reimburse providers for medically necessary and appropriate health care services and equipment listed in Wis. Stat. §§ 49.46(2) and 49.47(6)(a), as implemented by Wis. Admin. Code ch. DHS 107. Some services and equipment are covered if a prior authorization request is submitted and approved by the Division in advance of receiving the service. Finally, the MA program never covers some services and equipment.

In determining whether to grant prior authorization for services or equipment, the Division must always follow the general guidelines in §HFS 107.02(3)(e). That subsection provides that the Division, in reviewing prior authorization requests, must consider the following factors:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.

The key factor of the 12 listed above is #1 relating to "medical necessity". "Medically necessary" is defined in the Code as follows:

"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:

\* \* \*

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.

Wis. Admin. Code § DHS 101.03(96m).

Additionally, occupational therapy (OT) is an MA-covered service if it meets the criteria in Wis. Admin Code DHS § 107.17. OT services are subject to prior authorization after the first 35 treatment days per spell of illness. Extension of such services shall not be approved “if the recipient has shown no progress toward meeting or maintaining established and measurable treatment goals over a 6-month period, or the recipient has shown no ability within 6 months to carry over abilities gained from treatment in a facility to the recipient's home.” Wis. Admin. Code DHS § 107.17(3)(e)1.

In these types of cases, the provider has the burden to justify the provision of the service. WI Admin. Code DHS § 107.02(3)(d)6. The provider is required to prove the medical necessity for the requested fee-for-service OT services with accurate, clear, and objective clinical documentation. Each provider is solely responsible for the truthfulness, accuracy, timeliness, and completeness of PA requests. This includes the truthfulness, accuracy, timeliness, and completeness of the documentation necessary to support each PA request per DHS § 106.02(9)(e)1, Wis. Admin. Code. The documentation prepared by the provider must also be legible and concise per DHS § 106.02(a)(intro.), Wis. Admin. Code.

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 deformity, limitations, measurements of such deformities or 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.

In this case, the prior authorization was denied because the objectively measured changes in petitioner’s abilities could not be determined and there was no documented progress as a direct result of the OT services previously rendered. The Department Consultant indicated that given the documentation presented by the provider in the PA request, the objective changes in petitioner’s functional performance as a result of OT services are not established to allow extension of therapy services. The Consultant also stated that there is no documented progress as a result of the OT services rendered. The OT goals of treatment as presented in petitioner’s PA request, i.e., tooth brushing, dressing, and utensil use, appear to be substantially the same for quite some time (see, e.g. goal relating to fine motor skills and writing with pencil).

The DHCAA denied the request primarily because the evaluation did not show the medical need for the services. The consultant noted that although the evaluation showed problems to be worked on, it did not identify why petitioner was unable to accomplish the tasks. After reviewing the evidence, I have to agree with the DHCAA.

The DHCAA’s major concern is that the OT evaluations show little objective evidence of petitioner’s abilities. I agree. It simply is unclear how OT activities will improve the deficits, or whether any previous improvement was a direct result of the OT already provided.

The result is that although petitioner is learning new skills, it is unknown whether the skills of a therapist are needed to help her learn the skills since her basic abilities appear to be the same.

It is the provider’s duty to show improvement in specific, measurable ways. Otherwise it is difficult to tell if the improvement is due to the therapy or simply natural maturation. I will affirm the DHCAA’s denial

because I am unable to determine the objective need for the therapy and what results can be deemed to be successful.

**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 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 8th day of November, 2012

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John P. Tedesco  
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 8, 2012.

Division of Health Care Access And Accountability