



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

In the Matter of

[REDACTED]

AMENDED DECISION

MPA/144502

PRELIMINARY RECITALS

Pursuant to a petition filed October 15, 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 December 18, 2012, at Barron, Wisconsin. A decision denying the appeal was issued on January 7, 2012. That decision is amended by this decision.

The issue for determination is whether the petitioner is entitled to medical assistance reimbursement for speech and language 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

By: Theresa Walske

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 Barron County.

2. On April 7, 2012, the petitioner with her provider, Nature's Edge Therapy Center, Inc., requested speech therapy twice a week for 26 weeks at a cost of \$7,100. After reviewing additional information submitted by Nature's Edge, the Division of Health Care Access and Accountability denied the request on August 30, 2012.
3. The petitioner is a nine-year-old girl diagnosed with an inflammation of the middle ear and expressive and receptive language delays. She has trouble finding words and "spontaneously accessing speech sound sequences to form ulate intelligible words that reflect her true intention." *Progress and Treatment Plan*, December 5, 2012.
4. On March 15, 2012, the petitioner had standard score of 95 on the Goldman Fristoe Test of Articulation.
5. On March 29, 2012, when she was 8 years, 10 months old the petitioner had standard score for receptive language of 94 and an age equivalency of 8 years, 5 months on the Peabody Picture Vocabulary test.
6. Nature's Edge set the following goals for the petitioner:
 - a. [She] will retell a story with a picture cue to increase expressive communication/language skills 90% of at 10 pages or more for age level.
 - b. [She] will identify syllables and utilize multisyllable words to increase her intelligibility 90% of the time.
 - c. [She] will elicit appropriate conversational skills for appropriate response/solution 9/10 trials for age level.
 - d. [She] will utilize correct oral vocabulary usage for her age and her speech 90% of the time.
 - e. [She] will generate a sentence given one word or picture at 7 words long.
 - f. [She] will understand and produce age appropriate grammatical morphemes to age level for increased expressive language to age level.
 - g. [She] will understand and use correct syntax through 7 word sentences in imitation for for spontaneous expression 90% of the time.
7. The petitioner's school district provides 60 minutes of speech and language therapy to her each week. It also provides 225 minutes of specialized education in reading and writing each week. It set the following speech and language goals for her:
 - a. [She] will increase expressive/receptive language skills by at least 12 months.
 - b. [She] will increase her ability to state: attributes and functions (grammatically complete sentence forms) from the 5-6 year range to attain scores above 6.5 years.
 - c. [She] will increase her ability to state: labels, categories and definitions (grammatically complete sentences forms) from the 6-7 year range to attain scores above 7.5 years.
 - d. [She] will increase her ability to state: utterances containing all necessary content (nouns, verbs, and adjectives, etc.) and function words (is, of, the, a, etc.)

DISCUSSION

The original decision in this matter dismissed the appeal after finding that the petitioner appealed 46 days after her request for speech therapy was denied. Medical assistance appeals generally must be filed within 45 days. Wis. Admin. Code, § HA 3.05(3). This decision was wrong because the Division of Appeals incorrectly indicated that it was filed October 15, 2012, rather than October 11, 2012. (The postmark on

the envelope in which the appeal arrived was faint and barely legible.) In addition, even if the appeal had been filed on October 15, 2012, it would have been timely because the 45th and last day on which the appeal normally would have been due fell on a Sunday. When the last day of a statute of limitations falls on a Sunday, it becomes due on Monday. Wis. Stat. § 990.001(4). Because the decision was plainly in error, I am issuing an amended decision on my own accord within 30 pursuant to Wis. Admin. Code, § HA 3.10(1).

Medical assistance covers speech therapy if the recipient obtains prior authorization after the first 35 visits. Wis. Admin. Code § DHS 107.16(2)(b). On 7, 2012, the petitioner, together with her provider, Nature's Edge, Inc., requested speech therapy twice a week for 26 weeks at a cost of \$7,100. After requesting additional information, the Office of Inspector General denied the request on August 30, 2012.

When determining whether a service is necessary, the Division must review, among other things, the medical necessity, appropriateness, and cost of the service; the extent to which less expensive alternative services are available; and whether the service is an effective and appropriate use of available services. Wis. Admin. Code, § DHS 107.02(3)(e)1.,2.,3.,6. and 7. "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;
 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 petitioner is a nine-year-old girl diagnosed with speech and language delays. She receives speech and language services both through Nature's Edge and her school district. Her parents and her speech therapist, Becky Paine, testified that in comparison to the school program the therapy offered by Nature's Edge is more intense, provides more one-on-one therapy, and is provided by a trained speech therapist. While these things undoubtedly affect the quality of the therapy, I am bound by medical assistance rules and regulations and the final decisions issued by the Department interpreting those rules. Deputy Secretary Susan Reinardy held in *DHA Final Decision No. MPA-37/80183*, another speech therapy appeal, that "the deciding factor in whether services are duplicative is not the [therapy] technique utilized by the therapists, but the goals and outcomes being addressed by the therapists." *Id.* at 2. It does not matter, for example, if one provider addresses group activities with peers and the other one-on-one activities with an adult. A requested service duplicates "an existing service if the intended outcome of the two services is substantially the same." *Id.* at 3. Her decision specifically rejected additional therapy because the recipient "'needs' more intense services than the school provides." The holding rests on the principle that "Medicaid may not pay for two services if both services have the same intended outcome or result with respect to the medical condition the services are intended to address." *Id.* at 4. The deputy secretary has made it clear that the "intended outcome" test must be read broadly. In *DHA Final Decision*

No MPA-49/82886, a decision reiterating the principle laid down in *MPA-37/80183*, she pointed out that the intended outcome was the same if both therapists were working to develop similar functional skills. I am aware of federal case law holding that school services are adequate if they allow the student to participate in academic activities even if the services do not provide the student with the tools to participate fully in activities outside of a school setting. Nevertheless, the Department's decisions remain binding upon me as long as they are not overturned by a published appellate court decision.

Nature's Edge set the following goals for the petitioner:

1. [She] will retell a story with a picture cue to increase expressive communication/language skills 90% of at 10 pages or more for age level.
2. [She] will identify syllables and utilize multisyllable words to increase her intelligibility 90% of the time.
3. [She] will elicit appropriate conversational skills for appropriate response/solution 9/10 trials for age level.
4. [She] will utilize correct oral vocabulary usage for her age and her speech 90% of the time.
5. [She] will generate a sentence given one word or picture at 7 words long.
6. [She] will understand and produce age appropriate grammatical morphemes to age level for increased expressive language to age level.
7. [She] will understand and use correct syntax through 7 word sentences in imitation for spontaneous expression 90% of the time.

The school district's goals, which were scattered throughout the petitioner's individualized education plan, included the following:

1. [She] will increase expressive/receptive language skills by at least 12 months.
2. [She] will increase her ability to state: attributes and functions (grammatically complete sentence forms) from the 5-6 year range to attain scores above 6.5 years.
3. [She] will increase her ability to state: labels, categories and definitions (grammatically complete sentences forms) from the 6-7 year range to attain scores above 7.5 years.
4. [She] will increase her ability to state: utterances containing all necessary content (nouns, verbs, and adjectives, etc.) and function words (is, of, the, a, etc.)

While there are some differences between the two sets of goals and the methods of reaching those goals, the intended outcome sought by each provider is for the petitioner to speak and understand grammatically correct, coherent speech at a level appropriate for her age. Because both providers are seeking to impart the same basic functional skills on the petitioner, I must find that they duplicate each other even if Nature's Edge's therapy is more intense. Because the therapies duplicate each other, the Division of Health Care Access and Accountability correctly denied the petitioner's request that medical assistance reimburse Nature Edge.

CONCLUSIONS OF LAW

The petitioner is not entitled to medical assistance reimbursement for speech therapy from Nature's Edge because that therapy duplicates therapy she already receives through her school district.

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 6th day of February, 2013

\sMichael D. O'Brien
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 February 6, 2013.

Division of Health Care Access And Accountability