



FH

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

In the Matter of

[REDACTED]

DECISION

MPA/144931

PRELIMINARY RECITALS

Pursuant to a petition filed November 1, 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 November 27, 2012, at Washburn, Wisconsin.

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

By: Mary Chucka

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 Bayfield County.

2. On July 23, 2012, the petitioner with his provider, Nature's Edge, requested occupational twice week for 26 week at a cost of \$6,455. Nature's Edge submitted additional information at the Office of Inspector General's request. On September 17, 2012, the Office of Inspector General denied the request.
3. The petitioner is a 13-year-old boy diagnosed with Asperger's, a high -functioning form of autism, oppositional defiant disorder, and ADHD.
4. Nature's Edge's long term goals for the petitioner are for him to take his own medication, become more aware of his own safety, and attend to the details of his routine activities of daily living without requiring verbal cues.
5. The petitioner receives special education services through his school district. The goals listed in his individualized education plan include the following:
 - a. Remain on task long enough to complete the task on 4 of 5 trials.
 - b. Turn in 80% of his homework assignments on time.
 - c. Bring all necessary materials to class 80% of the time.
 - d. Math: independently complete 100% of assigned practice problems.
 - e. Math: complete 100% of curriculum based summative assessments.
 - f. Geography: complete Africa project to include a minimum of all require [sic] components.
6. The petitioner has at least normal intelligence. He has no physical problems that prevent him from performing any of the tasks listed in the goals Nature's Edge set for him.

DISCUSSION

Medical assistance covers occupational therapy if the recipient obtains prior authorization after the first 35 visits. Wis. Admin. Code, § DHS 107.17(2)(b). When determining whether a service is necessary, the Division must review, among other things, whether the service is medical necessary and an effective and appropriate use of available services. Wis. Admin. Code, § DHS 107.02(3)(e)1 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;

...

Wis. Admin. Code, § DHS 101.03(96m)

The Department has ruled on when therapy from one provider duplicates that from another. Deputy Secretary Susan Reinardy held in *DHA Final Decision No. MPA-37/80183*, a 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. The unstated rationale underlying the deputy secretary’s decision, at least as it pertains to private therapy that duplicates school therapy is that federal law requires school districts to meet the special needs of its students and the department will not allow a district’s failure to comply with this obligation to provide the reason for funding another source of therapy. The deputy secretary’s decisions are binding on administrative law judges, meaning that they must follow those decisions.

The petitioner is a 13-year-old boy diagnosed Asperger’s Syndrome (a high-functioning form of autism), oppositional-defiant disorder, and attention-deficit/hyperactivity disorder. Nature’s Edge requests reimbursement for twice-weekly sessions for 26 weeks at a cost of \$6,455. Its goals for the petitioner are for him to take his own medication, become more aware of his safety in matters such as crossing the street, and attend to the details of his routine activities of daily living without requiring verbal cues. All of these goals are related to his inability to stay on task: there is no evidence that he is physically unable or lacks the intelligence to complete any of these activities.

The petitioner receives special education services through his school district. Its goals for him include the following:

- a. Remain on task long enough to complete the task on 4 of 5 trials.
- b. Turn in 80% of his homework assignments on time.
- c. Bring all necessary materials to class 80% of the time.
- d. Math: independently complete 100% of assigned practice problems.
- e. Math: complete 100% of curriculum based summative assessments.
- f. Geography: complete Africa project to include a minimum of all require [sic] components.

These are not specifically occupational therapy goals, but nothing in the request by Nature’s Edge’s therapist, Heidi Jo Sovacool, demonstrated that she intended to use any knowledge specific to the occupational therapy field to help the petitioner concentrate better. The petitioner’s mother testified that Nature’s Edge focuses on sensory techniques, but Ms. Sovacool did not raise this in the Prior Authorization Request or subsequent documents she sent to the Office of Inspector General. She is aware that the Department, relying on authority granted by Wis. Admin. Code, § 107.02(2)(b) to bar payment for “medically unnecessary” and “inappropriate” services, held in in *Final Decision No. MPA-65/111878*, which involved one of her clients, that it cannot cover sensory techniques to treat those with autism. Because the primary purpose of Nature’s Edge’s therapy and this portion of the school’s therapy is to improve the petitioner’s ability to focus on and complete tasks, Nature’s Edge’s proposed therapy duplicates the therapy he already receives from his school district. Therefore, I must uphold the Office of Inspector General’s denial.

CONCLUSIONS OF LAW

The Office of Inspector General correctly denied the petitioner’s request for occupational therapy because it duplicates therapy he already receives through his 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 3rd day of January, 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 January 3, 2013.

Division of Health Care Access And Accountability