



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

MPA/145239

PRELIMINARY RECITALS

Pursuant to a petition filed November 14, 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 now known as the Office of Inspector General (OIG) in regard to Medical Assistance, a telephonic hearing was held on December 20, 2012, at Waukesha, Wisconsin.

The issue for determination is whether the OIG correctly denied petitioner's prior authorization (PA) request because it did not support the medical necessity for the requested speech therapy services.

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:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County. At the time of the PA request he was 4 years old and certified as eligible for MA.
2. Petitioner is diagnosed with Autism.
3. On September 4, 2012 the petitioner's private Speech Language Therapist at New Berlin Therapies SC submitted a PA request to the DHCAA/OIG for 52 sessions of SLT for petitioner.
4. Petitioner receives intensive in-home autism services.
5. On October 3, 2012 the DHCAA/OIG issued a notice to petitioner denying the PA request because it concluded that the SLT regimen requested was not sufficiently documented to be medically necessary under Wisconsin's MA rules.

DISCUSSION

Speech and language therapy is an MA-covered service, subject to prior authorization after the first 35 treatment days. Wis. Admin. Code, §DHS 107.18(2). In determining whether to approve such a therapy request, the DHCAA/OIG employs the generic prior authorization criteria found at §DHS 107.02(3)(e). Those criteria include the requirements that a service be medical necessary, appropriate, and an effective use of available services. Included in the definition of "medically necessary" at §DHS 101.03(96m) are the requirements that services not be duplicative of other services, and that services be cost effective when compared to alternative services accessible to the recipient. When speech therapy is requested for a school age child in addition to therapy provided by the school system, the request must substantiate the medical necessity of the additional therapy as well as the procedure for coordination of the therapies. Prior Authorization Guidelines Manual, Speech Therapy, page 113.001.03. It is up to the provider to justify the provision of the service. See Wis. Admin. Code §DHS 107.02(3)(d)6.

Wis. Admin. Code §DHS 107.02(2)(b) states that the Division may reject payment for a service if the services are determined to be medically unnecessary, inappropriate, in excess of accepted standards of reasonableness or less costly alternative services, or of excessive frequency or duration. "Medically necessary" is a defined term at Wis. Admin. Code §DHS 101.03(96m).

"Medically necessary" means a medical assistance service under Chapter 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. DHS 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.

Wis. Admin. Code §DHS 101.03(96m).

When the DHCAA/OIG first received the PA request here, it was returned to the private SLT requesting that the provider submit evidence of coordination of care with the in-home autism provider, to justify the frequency of the service, to show through a reevaluation any progressive objective findings and/or functional progress within the previous six months, and, in sum , an explanation of petitioner's potential for functional progress.

The provider submitted a new evaluation completed on September 19, 2012. See Exhibit 3 (attachment 2). The DHCAA/OIG compared that evaluation to petitioner's initial evaluation taken about 2 1/2 years previously on April 12, 2010. See Exhibit 3 (attachment 1). The comparison shows that petitioner's auditory comprehension abilities improved by 8 months, and his expressive communication abilities improved by 9 months. And while I agree it does show improvement, the documentation does not show whether this improvement is due to the private SLT, the in-home autism services, or natural maturation.

Again, it is the provider's duty to justify the provision of the services. As an MA-certified provider, providers who request the MA program to reimburse for their services are required, by law, to completely and accurately complete the prior authorizations which they submit. Not every medical provider can submit a PA to the MA program to request reimbursement. Only those providers who have been certified to provide MA-reimbursable services are allowed to submit a PA. One of the reasons these medical providers are "certified" is to assure they are kept up to date on changes in the MA program and the prior authorization process. MA-certified providers are expected to know the rules and policies controlling the prior authorization process and the completion of the prior authorization forms.

Petitioner's parents, who clearly want the best for their son, appeared at hearing but could not provide much in the way of testimony or documentation to support a different finding - appearing essentially at the mercy of a provider who is far more familiar with navigating the complexities of completing a prior authorization request, and showing with objective findings that the therapy requested has a direct, measurable benefit that is attributable to the requesting provider's services. .

Based upon the preponderance of the evidence in this record, I can only conclude that the provider has not justified the services requested. I do not doubt that petitioner needs treatment of some kind to help with his deficits, however, under the documentation I have, it does support the therapy requested. The provider can always submit a new PA with adequate documentation.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

That the MA Program does not provide reimbursement for the SLT services as requested by the petitioner, because the evidence in this record is insufficient to establish that the services are “medically necessary” as that term is defined by the Program.

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 Milwaukee,
Wisconsin, this 28th day of January, 2013

\sKelly Cochran
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 28, 2013.

Division of Health Care Access And Accountability