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

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In the Matter of

[REDACTED]

DECISION

MPA/145440

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 24, 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 28, 2012, at Montello, Wisconsin.

The issue for determination is whether the Department erred in its denial of the prior authorization request for speech and language therapy (SLT) in PA # [REDACTED]

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 (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 is a resident of Marquette County.

2. Petitioner is a six-year old boy. He has diagnoses including apraxia of speech and selective mutism.
3. Petitioner receives SLT through his IEP in the school setting. He also has been receiving SLT through various prior authorizations since June 2011 at Divine Savior Health Services.
4. Petitioner's provide submitted a request for prior authorization # [REDACTED] on September 20, 2012.
5. The PA was denied by the Department on October 15, 2012.
6. Petitioner filed a timely appeal.

### 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 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. § DHS 107.02(3)(d)6.

Prior hearing decisions have held consistently that where speech therapy is provided in school, it would not be cost effective for MA to cover private therapy. If the private therapy covers a situation that school therapy does not address, it has been found that the services are not duplicative. See, for example, the final Decision in DHA Case No. MPA-48/16180, (Wis. Div. Hearings Appeals, August 21, 1997) where the evidence showed that the petitioner had a unique oral deficiency that the school therapist was not trained to address. Also see the Decision in DHA Case No. MPA-51/41838 (Wis. Div. Hearings Appeals, November 18, 1999), where the school therapist was working on building vocabulary while the private therapist was working on the physical process of vocalizing sounds.

The Department, by then-Deputy Secretary Susan Reinardy held in DHA Final Decision No. MPA-37/80183 (Wis. Div. Hearings Appeals, February 16, 2007) (DHFS), 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."

That 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 Department 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, the Department's then-Deputy Secretary 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 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 provide the reason for funding another source of therapy.

In this case the goals and comments of the private and school therapists are very similar as demonstrated by the written record, including the IEP, the Divine Savior Plan of Care (see exhibit #2), and the testimony of provider Laurie Matteson. Ms. Matteson agreed that the goals are very similar, but that the methods are different and that the increased number of sessions is necessary to address apraxia. It thus appears that they are working on essentially the same areas of speech and language development and intelligibility of speech production.

The argument that the school-based regimen is only in group or classroom settings, and the private therapy would be “one-to-one” does not establish that the private regimen is needed, and prior decisions of the DHA have sustained the Department, repeatedly, on this point. It could very well be that petitioner requires more intensive private SLT than school can provide. However, the request must show that need and why the school SLT is insufficient.

Here, the record indicates that the school therapist is working on essentially the same speech & language skill deficits as the private therapist, as well as treating his poor intelligibility of speech production. Second, while the record does reflect testimony that indicates the two providers have contact, it provides little proof of the meaningful coordination of the two speech & language regimens. The documentation of this coordination is at best, poor.

In April of 2012 in case #MPA/139455, the petitioner appealed the denial of SLT based on duplication of services. The ALJ reversed on the basis that the school therapist was having little success due to petitioner’s selective mutism in the group setting. The ALJ advised that “at some point there will be a duplication because it is believed that petitioner will be able to speak in a group setting....” Based on the record in this case, it appears that time has come. Ms. Matteson admitted that petitioner has made significant progress since last year: “he has come a long way...he is starting to talk to other people and intelligibility has increased significantly.” The arguments now focus on one-on-one simply being a better method, or that petitioner simply needs more sessions because that is the proven method to treat apraxia. These arguments are not sufficient to establish medical necessity.

I find that the petitioner has not established by clinical documentation the medical necessity of the additional private therapy as that term is used by the MA Program, and the Department’s denial must be affirmed.

Nothing in this Decision prevents the petitioner and his private provider from submitting a new PA Request for a new SLT regimen that better documents the medical necessity of the sought private regimen.

### **CONCLUSIONS OF LAW**

Petitioner’s provider has not shown the medical necessity of private SLT because petitioner receives SLT in school and the MA-defined medical necessity for additional fee-for-service SLT is not shown on the preponderance of the evidence in this record.

**NOW, 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 5th day of February, 2013

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\sJohn 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 February 5, 2013.

Division of Health Care Access And Accountability