



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/146148

PRELIMINARY RECITALS

Pursuant to a petition filed December 21, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Office of the Inspector General [“OIG”] in regard to Medical Assistance [“MA”], a Hearing was held via telephone on February 20, 2013. At petitioner’s request a Hearing scheduled for January 28, 2013 was rescheduled.

The issue for determination is whether OIG was correct to deny Prior Authorization [“PA”] for MA payment for intensive in-home mental health services for petitioner.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Represented by:

[REDACTED], petitioner’s mother
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Jo Ellen Crinion, RN [Ms. Crinion did not appear at the February 20, 2013 Hearing, but submitted a letter dated January 23, 2013.]

Office of the Inspector General
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (age 3 years & 6 months) is a resident of Dane County, Wisconsin and is certified for MA.
2. On October 19, 2012 petitioner's provider, [REDACTED] [REDACTED] [REDACTED] of Belleville, Wisconsin, requested PA (P.A. # [REDACTED] dated October 19, 2012) for MA coverage of intensive in-home mental health services for petitioner at the rate of 1 individual session per week for 3 months for 1 hour each time, 1 family session per week for 3 months for 3 hours each time, and travel time of 39 hours (1 & 1/2 hour each week) each for 2 persons (78 hours total) with a requested start date of October 10, 2012 at a total cost of \$9,100.00.
3. On October 23, 2012 OIG denied P.A. # [REDACTED] for coverage of intensive in-home mental health services for petitioner; OIG sent a letter to petitioner dated November 7, 2012 and entitled *BadgerCare Plus Notice of Appeal Rights* informing him of the denial.
4. Petitioner has Disruptive Behavior Disorder (often loses temper, actively defies or refuses to comply, annoys people, touchy and easily annoyed) and Expressive Language Disorder (limited vocabulary, difficulty producing sentences with developmentally appropriate length or complexity, which interfere with social communication, no developmental disorder or mental retardation present).
5. In a letter dated November 9, 2012 petitioner's doctor and other professionals state that petitioner's "presentation is consistent with Disruptive Behavioral Disorder" and "we feel in-home family counseling would be optimal for [petitioner];" In a letter dated November 27, 2012 [REDACTED] states that "In-Home Family Therapy is recommended for this child, as this would be the most effective method to addressing his mental health needs, and support his parents in learning techniques to assist with behavioral modification."
6. A *Neuropsychological Evaluation* report dated June 6, 2012 by a Clinical Neuropsychologist concluded that petitioner "presents with significant expressive language delays that are likely contributing to his emotion dysregulation [sic]. His tantrums are quite significant and are interfering with his relationships with siblings. [Petitioner] does not present with symptoms associated with autism, but it is likely that his expressive language delays affect [sic] social relationships, emotion dysregulation [sic], and play behaviors. It is also important to keep in mind that his uncorrected vision also likely plays a strong role in these areas as well."

DISCUSSION

Intensive In-Home Mental Health Treatment for children requires PA. Wis. Admin. Code § DHS 107.22(4) (May 2009). This is a denial of eligibility for services; it is not discontinuation of services. As with any eligibility denial, the burden is on petitioner to show that he is eligible for the requested services. *Lavine v. Milne*, 424 U.S. 577, 583-584 (1976). Petitioner has failed to do so. OIG denied PA in this case because "the documentation submitted fails to justify the medical necessity of the service." OIG is correct.

By law, MA pays only for medically necessary and appropriate health care services when provided to currently eligible MA recipients. Wis. Admin. Code §§ DHS 107.01(1) & 107.17(1) (May 2009); See

also, Wis. Stat. §§ 49.46(2) & 49.47(6)(a) (2011-12). In order for a service to be *medically necessary* it must meet several specific requirements. See, Wis. Admin. Code § DHS 101.03(96m) (December 2008).

One of the requirements for *medical necessity* is that the service must be required to prevent, identify, or treat a recipient's illness, injury, or disability. Wis. Admin. Code § DHS 101.03(96m)(a) (December 2008). Based on the evidence in the record of this matter it cannot be concluded that intensive in-home mental health services are required to prevent, identify, or treat petitioner's disability. It appears from the evidence in the record of this matter that petitioner's Expressive Language Disorder (and perhaps his uncorrected vision as well) is the cause of the symptoms on which it has been determined that he has Disruptive Behavior Disorder. If this is the case then Speech and Language Therapy ["SLT"] (and perhaps correcting his visions) may be the required treatment rather than intensive in-home mental health services. Although it is true that intensive in-home mental health services has been recommended for petitioner there is insufficient support for this recommendation in the evidence that is part of the record of this matter.

CONCLUSIONS OF LAW

For the reasons discussed above, OIG was correct to deny PA for MA payment for intensive in-home mental health services for petitioner.

THEREFORE, it is

ORDERED

That the petition for review herein web 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 21st day of March, 2013

\sSean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 21, 2013.

Division of Health Care Access And Accountability