



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

MPA/146418

PRELIMINARY RECITALS

Pursuant to a petition filed January 8, 2013, 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 regards to the modification of prior authorization under Medical Assistance for speech & language therapy services, a telephone hearing was held on February 1, 2013, at Juneau, Wisconsin.

The issue for determination is whether the Division correctly modified the petitioner's speech & language therapy regimen from 26 visits to 13 visits.

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, CCC -SLP,
Speech & Language Pathology Consultant
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a 4 year-old resident of Dodge County. She lives at home with her parents.

2. Petitioner has global developmental delays, autism spectrum disorder, and epilepsy. She participates in school-based services program including early childhood, occupational therapy, physical therapy, and speech & language therapy (SLT) under an Individualized Educational Plan (IEP) from the [REDACTED]
3. On October 18, 2012, the Division of Health Care Access and Accountability received a prior authorization request from Rehab Resources, Inc., seeking approval of 26 speech & language therapy visits, i.e., 13 visits to address speech and hearing deficits, and 13 visits to address oral function deficits, at a cost of \$3,718.
4. The PA Therapy Attachment states that relevant goals of the private therapy regimen that are directed towards the production of speech, and addressing receptive language deficits are: (1) Patient will demonstrate diaphragmatic breathing x3/session in 2:3 sessions as a precursor to consistently establishing and appropriate base of breath support for vocalizations; (2) Patient will move tongue in vertical and horizontal planes of movement x3 each during a session in 2:3 sessions; (3) Patient will produce 2 new vowels in imitation over this re-certification period. See, Exhibit #2, attached PA/TA, at p. 3 of 3.
5. The school system's IEP states that the relevant goals of the school -based services SLT regimen are directed towards the production of speech, and addressing receptive language deficits are: (1) Given verbal models, [REDACTED] will imitate verbal play (vowels and consonants) and CV and CVC words, 50% of the time. (Baseline 0%); (2) Given oral stimulation by a toothette or other tool, [REDACTED] will move her jaw, cheeks and tongue as an active participant, 75% of the time. (Baseline 25%). See, Exhibit #2, attached IEP, at p. 8 of 15.
6. On November 26, 2012, the Division issued a letter to the petitioner informing her that her PA Request had been modified and approved in part as to 13 speech & language therapy visits to address oral functions, but denied as to 13 SLT visits to address speech and hearing deficits, as the Division determined that the latter visits were not medically necessary in light of the petitioner's SLT regimen at the school system.
7. On January 8, 2013, the petitioner filed an appeal contesting the modification and denial of 13 of the 26 SLT visits requested.

DISCUSSION

Physical therapy is covered by MA under Wis. Adm. Code, §DHS 107.16. Generally it is covered without need for prior authorization (PA) for 35 treatment days, per spell of illness. Wis. Adm. Code, §DHS 107.16(2)(b). After that, PA for additional treatment is necessary. If PA is requested, it is the provider's responsibility to justify the need for the service. Wis. Adm. Code, §DHS 107.02(3)(d)6. If the person receives therapy in school or from another private therapist, there must be documentation of why the additional therapy is needed and coordination between the therapists. Prior Authorization Guidelines Manual, p. 111.001.02, no. 3.

In reviewing a PA request the DHCAA (now known as the Office of the Inspector General) must consider the general PA criteria found at §DHS 107.02(3) and the definition of "medical necessity" found at §DHS 101.03(96m). §DHS 101.03(96m) defines medical necessity in the following pertinent provisions:

"Medically necessary" means a medical assistance service under ch. HFS 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; ...
3. Is appropriate with regard to generally accepted standards of medical practice; ...

6. Is not duplicative with respect to other services being provided to the recipient; ...
8. ...[I]s 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 DHCAA interprets the code provisions to mean that a person must continue to improve for therapy to continue, specifically to increase the ability to do activities of daily living. In addition, at some point the therapy program should be carried over to the home, without the need for professional intervention. Finally the MA program will not pay for therapy if the person already receives therapy from a different provider, with one exception.

The reason for the denial of services in this case is that petitioner is receiving services in school that are meant to address the same issues that the private therapy is addressing. One of petitioner's arguments is that school therapy focuses on issues that directly affect the child in a school environment, versus private therapy that focuses on the home environment. The Department has long held the position that school therapy and private therapy basically address the same deficits and use the same techniques. Thus for private therapy to be approved when school services are in place, there must be some deficit or deficits that the school therapist cannot address. The Department has refused to accept that the difference between school and private therapy can be that the school therapy addresses school concerns while the private therapy addresses home concerns. See Final Decision no. MPA-37/80183, dated February 16, 2007, which reaffirmed that analysis as it concerns speech therapy.

Rather, the Division's professional consultant compared the goals of the fee-for-service provider SLT regimen and the goals of the school-based-services SLT regimen, and found that the both addressed the same "intended outcome". See, Exhibit #1, at p. 5 (for a detailed discussion of the term "intended outcome".) The consultant also prepared a table of comparison of these goals. See, Exhibit #1, at p. 3; and see, Findings of Fact Nos. 4 & 5, above. I find the comparison of the goals to be both accurate, and persuasive, to the point that both regimens will be seeking to achieve basically the same "intended outcome", the production of vocalizations, including vowels; and the manual manipulation and movement of the jaw, cheeks and tongue as precursors to speech production. In addition, the petitioner has not presented any evidence of the collaboration or coordination of service plans between the two providers in any meaningful or documented way, including the lack of any proof of any exchange of clinical notes or treatment plans. Under these facts, the requested 13 visits in the regimen to address speech & hearing deficits were not established to be medically necessary. Rather, these visits are essentially duplicative of the school-based services regimen and also not demonstrated to be the product of rational and comprehensive coordination of services from the two therapists. The Division correctly modified the instant PA Request to 13 approved visits for oral function SLT, while denying the 13 visits requested to address speech deficits.

Nothing in this Decision prevents the petitioner from submitting a new prior authorization request in the future for services that she can establish with clinical documentation are not duplicative, are coordinated, and are medically necessary. The evidence here is insufficient to demonstrate that this is so at present.

CONCLUSIONS OF LAW

The Division correctly modified the petitioner's prior authorization request from 26 to 13 speech & language therapy visits because the petitioner has not established by the preponderance of the evidence that the 13 visits of therapy requested to address speech and hearing deficits is medically necessary under MA program rules.

THEREFORE, it is

ORDERED

That the petition for review herein be, and the same hereby 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 5th day of February, 2013

\sKenneth D. Duren, Assistant Administrator
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