FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]
c/o [redacted] & [redacted]
[redacted]
[redacted]

DECISION

MPA/146575

PRELIMINARY RECITALS

Pursuant to a petition filed January 11, 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 regard to Medical Assistance, a hearing was held on April 17, 2013, at Menomonie, Wisconsin.

The issue for determination is whether the petitioner is entitled to medical assistance reimbursement for speech and language therapy.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]
c/o [redacted] & [redacted]
[redacted]
[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:
Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [redacted]) is a resident of Dunn County.

2. The petitioner was found eligible for medical assistance on September 1, 2012, retroactive to February 1, 2012.

3. On October 16, 2012, the petitioner with his provider, [redacted], requested 24 weekly 45-minute to one-hour speech and language therapy sessions beginning on April 23, 2012, at a cost of $10,956.40.

4. The petitioner is a seven-year-old boy diagnosed with autism.

5. [redacted]'s set the following goals for the petitioner:

    a. [He] will use specific and accurate multi-word phrases to communicate his needs at least 80% of the time over a 50 utterance language sample.

    b. [He] will accurately and specifically report at least three different three step events to a family member.

    c. Be understood in 9 of 10 phrases when involved in conversation and/or free play each session for 2 treatment sessions.

6. The petitioner receives speech therapy from his school district. He also receives in-home autism services. As of November 27, 2012, [redacted]'s had not received a copy of the petitioner's in-home autism plan, and one was not presented at the hearing.

DISCUSSION

Medical assistance covers speech therapy, but recipients must obtain prior authorization after the first 35 visits. Wis. Admin. Code § DHS 107.18(2)(b). The petitioner, together with his provider, [redacted]'s Hospital, requested 24 weekly 45-minute to one-hour speech and language therapy sessions beginning on April 23, 2012, at a cost of $10,956.40. The Office of Inspector General denied the request.

The Office contends, among other things, that the request is late. [redacted]'s did not submit the request until October 16, 2012, but the services began on April 23, 2012. Generally, the Department cannot reimburse providers who submit a request after the services are received. However, Wis. Admin. Code, § DHS 106.03(4)(b), grants an exception to this rule in the following circumstance: "Where the service requiring prior authorization was provided before the recipient became eligible, and the provider applies to and receives from the department retroactive authorization for the service." The petitioner was not found eligible for medical assistance until September 1, 2012, but the services were made retroactive to February 1, 2012. The Office of Inspector General points out that even after being found eligible, [redacted]'s waited another 1½ months to submit the request. This is true, but all of the sessions would have been provided even if the request had been submitted immediately after the petitioner was found eligible. Because this request would pertain solely to retroactive service regardless of when it would have been filed, the six-week delay did not impair the Office's ability to determine whether those services met the criteria needed for approval. Therefore, I will determine this matter on the merits.

When determining whether a service is necessary, the Division must review, among other things, the medical necessity, appropriateness, and cost of the service; the extent to which less expensive alternative services are available; and whether the service is an effective and appropriate use of available services. Wis. Admin. Code, § DHS 107.02(3)(e)1.,2.,3.,6. and 7. "Medically necessary" means a medical assistance service under ch. HFS 107 that is "[r]equired to prevent, identify or treat a recipient's illness, injury or disability;" and, among other things, is "not duplicative with respect to other services being provided to the recipient." Wis. Admin. Code § DHS 101.03(96m)(a) and (b)6.

Private therapists are expected to coordinate their services with other providers to avoid duplication. The petitioner and his provider have the burden of proof in this appeal. This means that to prevail they must

present enough evidence to show that they meet the legal requirements for receiving speech therapy. If the provider submits no evidence of coordination, it is impossible to determine whether the petitioner meets the legal requirement that the requested therapy not duplicate other services he already receives. To ensure coordination, speech therapy guidelines specifically require that providers submit "[d]ocumentation of coordination of the therapy treatment plan with these other service providers," including schools, before the request can be approved. *Prior Authorizations Guidelines Manual,* § 113.001.03.

The petitioner receives speech services both from his school district and through in-home autism services; although [redacted]'s request included the school's individualized education plan, it does not include any documentation of the services the petitioner receives from the in-home autism program. [redacted]'s therapist testified and contends that those providing the autism services are not speech therapists and therefore these services cannot be speech therapy. I have developed considerable respect for [redacted]'s services after having reviewed a number of its proposals and heard its therapists testify. It varies its program to account for each recipient's specific needs rather than relying on canned proposals, variety that is rarer than it should be among the providers whose proposals I regularly review. Nevertheless, any decision must conform to the principles laid down in the Department's final decisions. One such decision specifically addressed the contention that in-home autism providers do not duplicate other speech therapy services because they do not use speech therapists. That decision called the contention "beside the point" because the "in-home staff members are utilizing techniques learned from a licensed ST to carry over to petitioner's home environment." *DHA Final Decision No. MPA-37/80183*.

That decision, which was also a speech therapy appeal, explains when services by multiple providers are considered to duplicate each other: 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. The 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 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*, pointed out that the intended outcome was the same if both therapists were working to develop similar functional skills.

Because [redacted]'s prior authorization did not include evidence of coordination with the autism program, it has failed to meet its burden of proving that its services do not duplicate the autism services. This alone requires me to uphold the denial of the services. I also find that [redacted]'s has not met its burden of showing that its services are cost effective. After subtracting the cost of the evaluation, [redacted]'s is requesting $10,536.40 for no more than 24 hours of services, and likely less, because the 24 sessions are scheduled to last between 45 and 60 minutes. This means that each session costs over $439 per hour. I do not know what the standard rate for speech therapists is, but this appears excessive.

CONCLUSIONS OF LAW

The Office of Inspector General correctly denied the petitioner's request for speech and language therapy because she has failed to prove that those services do not duplicate services she already receives from her autism provider.

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 29th day of April, 2013

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\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 April 29, 2013.

Division of Health Care Access And Accountability