



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION

MPA/146645

PRELIMINARY RECITALS

Pursuant to a petition filed January 14, 2013, under Wis. Stat., §49.45(5), to review a decision by the Division of Health Care Access and Accountability (DHCAA) to deny Medical Assistance (MA) authorization for physical therapy (PT), a hearing was held on March 19, 2013, by telephone. A hearing set for February 21, 2013 was rescheduled at the petitioner's request.

The issue for determination is whether petitioner can receive private PT when she is receiving PT in school.

PARTIES IN INTEREST:

Petitioner:

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

Respondent:

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

By: Written submission of Pamela J. Hoffman, PT Consultant

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a three-year-old resident of Rock County who receives MA.
2. Petitioner is diagnosed with spinal muscular atrophy. She has contractures that require PT to alleviate. She also receives PT to improve endurance and to maintain cardiovascular and respiratory health.
3. Petitioner began school in the fall, 2012. Her school regimen includes twice weekly PT.

4. On September 10, 2012, [REDACTED] [REDACTED] requested prior authorization for twice weekly PT for 26 weeks, PA no. 5122540147. After several submissions, the DHCAA denied the request by a letter dated December 7, 2012.
5. The school therapist is working on essentially the same goals as the private therapist.

DISCUSSION

Physical therapy is covered by MA under Wis. Admin. 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. Admin. 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, Physical, Occupational, and Speech Therapy, Topics 2781 and 2784.

In reviewing a PA request the DHCAA 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. 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; ...
 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.

The primary 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. Petitioner's providers argue 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; the rules/policies for speech and physical therapy are identical.

The major problem with this request is that there is no coordination at all with the school therapist. Furthermore, when asked about the difference between the school and private therapies, Ms. [REDACTED] explained that school therapy was working on educational issues as opposed to home issues, which is a difference that the Department has long dismissed.

It appears that the primary concern for petitioner's representatives is that the school therapy is not of sufficiently intensity, coupled by petitioner often missing school because of illness or other factors. If the school therapy is insufficient, then petitioner's parents need to advocate for more therapy, or they could drop school therapy entirely and focus on private therapy. Under MA policy, however, the program will not pay for private therapy when school therapy is in place unless there is a major difference in focus and the school therapist is unable to work on the issues addressed in the private therapy.

CONCLUSIONS OF LAW

The DHCAA correctly denied the request for private PT because petitioner receives PT in school.

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 22nd day of March, 2013

\sBrian C. Schneider
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 March 22, 2013.

Division of Health Care Access And Accountability