



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

In the Matter of

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

DECISION

MPA/146723

PRELIMINARY RECITALS

Pursuant to a petition filed January 16, 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 telephone hearing was held on February 21, 2013.

The issue for determination is whether the respondent properly denied petitioner's prior authorization (PA) request for speech therapy services.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[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:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Door County.

2. Petitioner was born September 20, 2002. He has a diagnosis of mitochondrial disorder, and is blind, non-verbal, and cannot walk. Petitioner is fed via g-tube, and has a swallowing disorder.
3. Petitioner has been prescribed Polycose, which is a powder added to his food for the sake of adding extra calories to his diet. The Polycose was prescribed because petitioner was unable to maintain proper weight and growth. Exhibit 4.
4. Petitioner's Gastroenterologist discontinued the Polycose prescription on January 18, 2013, due to petitioner's increase in consumption of table foods and drinking fluids from a straw. Exhibit 4.
5. On December 6, 2012, petitioner submitted a PA request for speech therapy/oral function therapy services to be provided through Cerebral Palsy, Inc. in Green Bay, Wisconsin. The PA request was returned with questions and resubmitted on December 18, 2012. Respondent denied the PA request on January 3, 2013. Exhibit 2.

DISCUSSION

Speech and language therapy is an MA-covered service, subject to prior authorization after the first 35 treatment days. Wis. Adm. Code § DHS 107.18(2). In determining whether to approve such a therapy request, the respondent 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. "Medically necessary" services are those "required to prevent, identify or treat a recipient's illness, injury, or disability. Wis. Adm. Code § DHS 101.03(96m)(a).

Included in the definition of "medically necessary" at § DHS 101.03(96m)(b) are the requirements that services be of proven medical value or usefulness, that services not be duplicative of other services, and that services be cost effective when compared to alternative services accessible to the recipient. It is up to the provider to justify the provision of the service. Wis. Adm. Code § DHS 107.02(3)(d)6.

During the fair hearing process, it is generally accepted that the state or county agency, as the party which has taken the action appealed from bears the burden of proof of the propriety of that action. *See State v. Hanson*, 98 Wis.2d 80, 295 N.W.2d 209 (Ct.App.1980). Like most public assistance benefits, however, the initial burden of demonstrating eligibility for any particular benefit or program at the operational stage falls on the applicant, *Gonwa v. Department of Health and Family Services*, 2003 WI App 152, 265 Wis.2d 913, 668 N.W.2d 122 (Ct.App.2003). In other words, it was petitioner's burden to demonstrate that he qualified for the requested speech and oral function therapy services.

An applicant will need to demonstrate that the procedure for which he or she seeks approval is medically necessary. "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;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. HFS 107.035, is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;
 7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;

8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is 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.

Wis. Admin. Code §DHS 101.03(96m).

The crux of the Division's denial of petitioner's request is that while Matthew clearly has oral functioning deficits, the provider failed to demonstrate that the petitioner has made progress as the result of therapy necessary to justify the PA request. The MA definition of medical necessity requires that services provided be basic and necessary, and does not allow the same therapy to be provided in two settings.

The respondent, in a January 24, 2013, reconsideration summary, cited the Wisconsin Administrative code in succinctly summarizing its position as follows:

Extension of therapy services shall not be approved in any of the following circumstances:

1. The recipient has shown no progress toward meeting or maintaining established and measurable treatment goals over a 6-month period, or the recipient has shown no ability within 6 months to carry over abilities gained from treatment in a facility to the recipient's home.

Exhibit 3, citing Wis. Admin. Code § 107.18(3)(e).

She further noted that,

The therapist wrote, "Please know that [REDACTED]'s progress has been tremendous." The documentation does not support "tremendous" progress. There is no documented functional change in [REDACTED]'s ability to meet his nutrition. In 2003 he received all of his nutrition for a g-tube. In 2011 [REDACTED] met all of his nutrition via a g-tube. In 2012 following a year of therapy at Cerebral Palsy, Inc., [REDACTED]'s nutrition continues to be met through a g-tube.

Exhibit 3.

It is the responsibility of the fee-for service provider to justify MA coverage of the service to the Division. The respondent has correctly identified the requirement that the provider demonstrate progress, and I find that the provider has now done so. While the initial PA documentation may have been less than ideal in terms of establishing petitioner's progress, petitioner's mother and providers have provided sufficient testimony and supporting documentation to demonstrate by a preponderance of the evidence that petitioner has, in fact, made substantial progress recently.

Petitioner's speech therapist testified that petitioner has made substantial progress in his precursory skills, and noted that he has progressed to new textures, a necessary step in moving to more solid food consumption. Petitioner's mother and providers noted that his weight gain is now visible, and that he is able to bring food to his mouth and feed himself for the first time. As indicated in Findings of Fact #3 and #4, above, petitioner's progress in oral consumption of foods and liquids has very recently permitted his gastroenterologist to discontinue his Polycose prescription due to gains in non-g-tube caloric intake.

Accordingly, for the above reasons, I conclude that the Department incorrectly denied petitioner's PA request for speech and oral function therapy.

I note to the petitioner that his provider will not receive a copy of this Decision. In order to have the service requested approved, the petitioner must provide a copy of this Decision to Cerebral Palsy, Inc. The provider must then submit a new prior authorization request with a copy of this Decision to receive the approved coverage.

CONCLUSIONS OF LAW

The petitioner has established the medical necessity for the following services:

<u>Service Code</u>	<u>Description of Service</u>	<u>QR</u>
92506	Speech/Hearing Evaluation	1.000
92610	Evaluate Swallowing Function	1.000
92526	Oral Function Therapy	26.000

THEREFORE, it is

ORDERED

That Cerebral Palsy, Inc. is hereby authorized to provide the petitioner with the requested services, as identified in PA request no. [REDACTED] (and as repeated in the Conclusions of Law, above), and to submit its claim, along with a copy of this Decision and a new prior authorization request to ForwardHealth for payment.

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 2nd day of April, 2013

\sPeter McCombs
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 3, 2013.

Division of Health Care Access And Accountability