



FH

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

---

In the Matter of

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

DECISION

MPA/147603

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed February 20, 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 March 18, 2013, at Barron, Wisconsin.

The issue for determination is whether the petitioner is entitled to medical assistance reimbursement for child/adolescent day treatment services.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

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

Respondent:

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

By: Jo Ellen Crinion

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 is a resident of Barron County.

2. On February 1, 2013, the petitioner with Northwest Journey—Siren requested adolescent day treatment services five hours a day, five days a week from January 29, 2013, through April 29, 2013, at a cost of \$26,000. Northwest Journey did not submit all of the required prior authorization forms until February 11, 2013.
3. The petitioner is a 16-year-old girl diagnosed with a reactive attachment disorder, an anxiety disorder, an oppositional defiant disorder, and attention deficit/hyperactive disorder.
4. The petitioner lived with her mother who died five years ago just before the petitioner's 11<sup>th</sup> birthday. Her mother neglected her children and exposed the petitioner to numerous episodes of inappropriate sexual activity and substance abuse. After her mother's death, the petitioner was separated from her siblings and moved in with her maternal grandparents. She was defiant throughout the time she lived there. She left in March 2012 when she entered a residential treatment facility.
5. The petitioner has lived with her maternal uncle and aunt since being discharged from residential treatment.
6. The petitioner was in the Mikan Day Treatment Program from October 2011 through March 2012, the Northwest Passage residential treatment facility from March through August 2012, and the Northwest Journey—Superior Day Treatment program from August through November 2012. The last service ended because the program closed down.
7. The petitioner tells lies and steals money at home on a regular basis. She plotted with her boyfriend to make false sexual assault allegations against her uncle so that she could move out of his house into her boyfriend's. She has a long history of making false rape or abuse allegations against her male peers.
8. The petitioner's behavior has not improved significantly since she first received adolescent day treatment.
9. The petitioner has at least average intelligence.
10. The petitioner receives psychiatric services in Superior.
11. The petitioner's risk of harming herself or others is listed as low.

### **DISCUSSION**

The petitioner and her provider, Northwest Journey—Siren, seek reimbursement for three months of Child/Adolescent Day Treatment Services at a cost of \$26,000. The Office of Inspector General denied the request for a variety of reasons, including that the services were provided before the request was made and proper documentation was submitted.

The Office of Inspector General indicates that this is a "HealthCheck—Other Service" covered under Wis. Admin. Code, § DHS 107.22(4), a catch-all category applying to any service described in the definition of "medical assistance" found at 42 USC 1396d(a). Day treatment mental health services for children under 18 are more specifically covered by Wis. Admin. Code, Chapter DHS 40. To qualify for services, a child "must have a primary psychiatry diagnosis of mental illness or severe emotional disorder." Wis. Admin. Code, § DHS 40.08(3)(a). "Mental illness" is defined as a "medically diagnosable mental health disorder which is severe in degree and which substantially diminishes a child's ability to carry out activities of daily living appropriate for the child's age." Wis. Admin. Code, § DHS 40.03(16). Each child is evaluated by a psychologist or psychiatrist and has a treatment plan approved by a program. Wis. Admin. Code, §§ DHS 40.08(4) and 40.09(2)(c). Like any medical assistance service, it must be medically necessary, cost-effective, and an effective and appropriate use of available services. It must also meet the "limitations imposed by pertinent...state...interpretations." Wis. Admin. Code § DHS 107.02(3)(e)1.,2.,3.,6., 7, and 9. Wis. Admin. Code.

"Medically necessary" is defined in Wis. Admin. Code § DHS 101.03(96m) as 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.

Northwest Journey requested 13 weeks of CADT services for the petitioner at a cost of \$26,000 on February 1, 2013, three days after she began receiving the services and two weeks before she submitted documentation to the Office of Inspector General. The missing documentation included the psychiatric evaluation and assessment of the petitioner. Nor did it include the psychiatrist's signature on the treatment plan or evidence that it was coordinating treatment with him.

Wis. Admin. Code, § DHS 107.02(3)(c) states: "If prior authorization is not requested and obtained before a service requiring prior authorization is provided, reimbursement shall not be made except in extraordinary circumstances such as emergency cases where the department has given verbal authorization for a service." This rule is not absolute. Wis. Admin. Code, § DHS 106.03(4)(a), which is found in the chapter in the administrative code pertaining to the provider's rights and responsibilities, allows an exception to this general rule "[w]here the provider's initial request for prior authorization was denied and the denial was either rescinded in writing by the department or overruled by an administrative or judicial order."

This rule is needed because it can often take weeks or months for the Division to review requests for needed therapy. This especially creates problems if the request is for continuing or follow-up services and the lack of approval can interrupt ongoing treatment. But the preferred method is for the Office to review the request before services begin because it, unlike the Division of Hearings and Appeals, has medical training in the area under review that allows it to provide an expert opinion on whether the service is necessary. When reviewing a matter in which the services begin before being approved, Hearings and Appeals must look at all of the circumstances of the case.

It is relevant that this is at least the sixth time that one of Northwest Journey's branches has begun services before submitting a complete prior authorization request. *See DHA Decision Nos. MPA 58/10823, MPA/35/139624, MPA/142947, MPA/142933, and MPA/143218.* It is also relevant that although the petitioner frequently engages in disturbing behavior such as making false sexual assault allegations and stealing, the file itself indicates that she does not pose a serious danger of harming herself or others. Despite her poor behavior, this is not an emergency where therapy must begin immediately.

This therapy costs \$26,000 for three months, and the provider indicated that she will need another three months after that. Given the high cost of this therapy, the provider has not justified allowing it when the request was late.

Moreover, even if the request had been filed on time, the petitioner has not met her burden of showing that this is cost-effective, medically necessary treatment. She received CADT from the Mikan Day Treatment Program from October 2011 through March 2012, and from Northwest Journey—Superior from August through November 2012. Northwest Journey—Siren reports that the last services ended early because the facility closed down, and as a result she did not receive the full benefit of the program. However, because this is a three-month program, it appears that she had completed most of it. In addition, because she was receiving services at another Northwest Journey facility, it is unclear why the provider did not seek permission from the Office of Inspector General to transfer her to the Siren facility from which she is now receiving treatment. She also received treatment at the Northwest Passage residential treatment facility from March through August 2012.

Despite all this treatment, there is little evidence that her main problem—poor behavior—has improved significantly. She continues to lie, steal, and refuse to follow household rules. There are reports that she has repeatedly leveled false sexual assault allegations. In one instance, she had plotted to make a false allegation against her uncle, with whom she lives, so she could move in with her boyfriend. The testimony included the usual vague statements heard in all of these hearings that she now copes better. An example occurred at the hearing. When I tried to question her about her behavior, she ran out of the room. Those testifying on her behalf indicated that this demonstrated improved coping skills because this is how she settled herself down. (She never returned to the hearing.) Regardless of any improvement in her coping skills, she still lies, steals, and disobeys those with authority daily, indicating that despite two years of intensive treatment, there is little evidence that her overall behavior has improved much.

In addition, this treatment does little to address the petitioner's poor interactions with those she lives with, which is the root of much of her bad behavior. These types of problems are generally best addressed with family therapy, but further therapy is difficult when she is already receiving 25 hours a week of therapy at location that requires over two hours of driving each day to get there and back. Her therapy also has to have a bad effect on her education. Despite all of her problems and her time in treatment, her IQ in most areas is average or above. Northwest Journey provides only one hour of academic instruction per day, far short of what is needed for a 16-year-old to continue to progress.

In conclusion, I find nothing in the evidence that justifies spending the more than \$50,000 that the provider now indicates will be necessary to treat her with CADT.

### **CONCLUSIONS OF LAW**

The Office of Inspector General correctly denied the petitioner's request for CADT because she and her provider have not shown by the preponderance of the credible evidence that the therapy is medically necessary..

**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 12th day of April, 2013

---

\sMichael D. O'Brien  
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](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on April 12, 2013.

Division of Health Care Access And Accountability