



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

In the Matter of

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DECISION

MPA/147691

PRELIMINARY RECITALS

Pursuant to a petition filed February 25, 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 20, 2013, at Eau Claire, Wisconsin.

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

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████ ██████████
████████████████████
████████████████████
████████████████████

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 is a resident of Eau Claire County.

2. On December 4, 2012, the petitioner with his provider, St. Joseph's Hospital Rehab Agency, requested 24 weekly one-hour speech and language therapy session at a cost of \$14,465.60.
3. The petitioner is a four-year-old boy diagnosed with severe autism. He remains non-verbal.
4. The petitioner receives services through the Wisconsin Early Autism Project.
5. St. Joseph's set the following goals for the petitioner:
 - a. Play appropriately with 5 different toys for at least 5 minutes for each toy in one treatment session.
 - b. Respond to his name in 4 of 5 trials on one treatment session.
 - c. Follow five simple directions in one treatment session.
 - d. Imitate at least 5 gross motor actions at least 3 times each session for 3 sessions.
 - e. Use pictures, signs, gestures, or words to protest in 4 of 5 trials each session for 3 sessions.
 - f. Complete 5 circles of interaction 5 difference play activities in one session.
6. WEAP set the following speech and language goals for the petitioner:
 - a. To increase [his] attending skills to a 90% or higher success rate in targeted programs.
 - b. To increase [his] ability to interact appropriate with peer at a 90% or higher success rate in targeted programs. In the next six months we intend to introduce the following programs: Reciprocal Actions. Toy Manipulation.
 - c. To increase [his] comprehension and production to a 90% or higher success rate in targeted program.
 - d. To increase [his] verbalization to a 90% or higher success rate in targeted program. In the next six months, we plan to introduce the following programs: Imitation of Sounds, Imitation of Words, and Increasing MLU (Mean Length of Utterance).
 - e. To increase [his] ability to interact appropriate with peers at a 90% or higher success rate in targeted programs. In the next six months, we plan to introduce the following programs: Reciprocal Actions, Toy Manipulation.

DISCUSSION

Medical assistance covers speech therapy if the recipient obtains prior authorization after the first 35 visits. Wis. Admin. Code § DHS 107.16(2)(b). On December 4, 2012, the petitioner, together with his provider, St. Joseph's Hospital & Rehab, Inc., requested 24 weekly one-hour speech and language therapy sessions at a cost of \$14,465.60. The Office of Inspector General denied the request on January 24, 2013. When determining whether a service is necessary, the Division must determine whether the service is medically necessary, which in turn requires it to determine whether the service duplicates other services the recipient receives. Wis. Admin. Code, §§ DHS 107.02(3)(e)1. and 101.03(96m)(b)6.

I note initially that I assume that the \$14,465.60 cost of the service is incorrect because if it is not, the petitioner is seeking over \$600 an hour for its services. Medical assistance services must be cost effective, and this would certainly exceed the bounds of that restriction. *See* Wis. Admin. Code, §§ DHS 107.02(3)(e)2 and 3. and 101.03(96m)(b)8.

The petitioner is diagnosed with autism. In the short time he was in the hearing room, it became clear that this is not a borderline case. At age four, he cannot speak, has no self-control, and does not respond in

the least to any verbal commands. His needs are clearly are great. He currently also receives therapy from the Wisconsin Early Autism Project, whose goals for him are similar to St. Joseph's. WEAP speech and language goals include:

- a. To increase [his] attending skills to a 90% or higher success rate in targeted programs.
- b. To increase [his] ability to interact appropriate with peer at a 90% or higher success rate in targeted programs. In the next six months we intend to introduce the following programs: Reciprocal Actions. Toy Manipulation.
- c. To increase [his] comprehension and production to a 90% or higher success rate in targeted program.
- d. To increase [his] verbalization to a 90% or higher success rate in targeted program. In the next six months, we plan to introduce the following programs: Imitation of Sounds, Imitation of Words, and Increasing MLU (Mean Length of Utterance).
- e. To increase [his] ability to interact appropriate with peers at a 90% or higher success rate in targeted programs. In the next six months, we plan to introduce the following programs: Reciprocal Actions, Toy Manipulation.

St. Joseph's set the following goals:

- a. Play appropriately with 5 different toys for at least 5 minutes for each toy in one treatment session.
- b. Respond to his name in 4 of 5 trials on one treatment session.
- c. Follow five simple direction in one treatment session.
- d. Imitate at least 5 gross motor actions at least 3 times each session for 3 sessions.
- e. Use pictures, signs, gestures, or words to protest in 4 of 5 trials each session for 3 sessions.
- f. Complete 5 circles of interaction 5 difference play activities in one session.

Thus both seek to help him understand and respond to others, to interact better, to begin to speak.

His therapist from St. Joseph's and his representatives point out that WEAP requires only that its employees are over 18 and have a high school degree or the equivalent; it does not require that they have any experience. WEAP has no experienced speech therapists working with the petitioner. The petitioner's representatives contend that what WEAP provides is not really speech therapy. I have had a number of hearings with St. Joseph's and have come away impressed with its therapists' competence each time. I assume that its speech therapists will help the petitioner, and I understand their skepticism toward therapy provided by those who need no experience or college education to qualify for their positions. Still, the petitioner's representatives have requested WEAP's services, and the State of Wisconsin is spending a considerable amount of money to ensure that the petitioner receives these services. WEAP documents submitted on the petitioner's behalf indicate that it provided him with 105.25 hours of total "direct therapy: in January 2013 and is requesting that this be increased by another 50 hours per month. Much of this pertains to improving his speech and language skills. As long as WEAP is providing what it describes as therapy to aid the petitioner's ability to communicate, I am bound by medical assistance rules and regulations pertaining to duplication and the final decisions issued by the Department interpreting those rules.

Deputy Secretary Susan Reinardy held in *DHA Final Decision No. MPA-37/80183*, another speech therapy appeal, that "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. Her 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 deputy secretary 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*, she pointed out that the intended outcome was the same if both therapists were working to develop similar functional skills. The deputy secretary has also specifically addressed the contention that in-home autism providers do not use speech therapists, calling it “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.” *Final Decision No. MPA-37/80183*.

These decisions do not let me judge the comparative competence of each provider. Rather, I must look at the goals of each and determine whether they duplicate each other. While there are some differences between the two sets of goals and the methods of reaching those goals, the intended outcome sought by each provider is similar. Because both providers are seeking to impart the same basic functional skills on the petitioner, I must find that they duplicate each other even if St. Joseph’s is more likely to succeed. Because the therapies duplicate each other, the Office of Inspector General correctly denied the petitioner’s request that medical assistance reimburse St. Joseph’s.

CONCLUSIONS OF LAW

The Office of Inspector General correctly denied the petitioner’s request for speech and language therapy because those services duplicate services she already receives from the Wisconsin Early Autism Project.

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 15th day of April, 2013

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on April 15, 2013.

Division of Health Care Access And Accountability