FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION

MPA/148138

PRELIMINARY RECITALS

Pursuant to a petition filed March 19, 2013, under Wis. Stat., §49.45(5), to review a decision by the Division of Health Care Access and Accountability (DHCAA) to modify Medical Assistance (MA) authorization for physical therapy (PT), a hearing was held on May 2, 2013, by telephone.

The issue for determination is whether the DHCAA correctly reduced requested PT services from once weekly to 8 times over 26 weeks.

PARTIES IN INTEREST:
Petitioner:

[redacted]
c/o [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 7-year-old resident of Brown County who receives MA.
2. Petitioner has cerebral palsy, schizencephaly, and legal blindness.
3. On February 11, 2013, [redacted] Inc. requested prior authorization for once weekly PT services for 26 weeks, PA no. [redacted]. After some exchange of information, the DHCAA approved 8 visits over the 26 week period, by a letter dated March 13, 2013.
4. In addition to the PT services petitioner is on a home exercise program. The therapist will show petitioner's caregiver techniques and give advice during the PT sessions.

5. Petitioner receives PT services in school once a week for 60 minutes. The school therapist utilizes a stander and seeks to have movement goals integrated into petitioner's school day. Petitioner does miss a lot of school, however.

6. Petitioner was hospitalized in the spring, 2012, and her physical condition has improved substantially since then. Her weight has doubled in the past year and her capabilities have improved.

7. The primary reason for the once weekly request is to monitor petitioner's hip alignment due to ongoing changes and to advise caregivers accordingly.

8. In February, 2013, when the request was made, petitioner was able to tolerate supported standing with less pain response, and was able to tolerate standing in a stander for 20 minutes. She was able to transfer with maximum assistance.

9. In determining the amount of therapy to authorize the DHCAA obtained the provider's treatment notes. The DHCAA noted that in most of the once weekly sessions previously approved the provider did not provide advice or note changes to the caregiver.

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. Admin. 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. HFS 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. Finally the MA program will not pay for therapy if the person already receives therapy from a different provider, with one exception.

The reason for the modification of services in this case is that petitioner has receives substantial PT in the past so that caregivers are able to handle her program to a great degree, and she is receiving services in school. One of petitioner's arguments is 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.

At the hearing petitioner's therapist argued that the therapy petitioner receives at [redacted] is actually maintenance therapy to prevent eventual scoliosis. Wis. Admin. Code, §DHS 107.16(3)(c) provides for maintenance PT in certain cases. Specifically, maintenance therapy is covered if:

1. The skills and training of a therapist are required to execute the entire preventive and maintenance program;
2. The specialized knowledge and judgment of a physical therapist are required to establish and monitor the therapy program, including the initial evaluation, the design of the program appropriate to the individual recipient, the instruction of nursing personnel, family, or recipient, and the necessary re-evaluations; or
3. When, due to the severity or complexity of the recipient's condition, nursing personnel cannot handle the recipient safely and effectively.

Maintenance PT is not meant to last indefinitely; there is a reason that the therapist must design a program and instruct family or nursing personnel. The problem with that argument is that the PA request does not stress anything about maintenance. Reading the evaluation makes clear that the goal is improving petitioner's abilities. Furthermore, if maintenance was the primary goal, the DHCAA almost certainly would not grant ongoing weekly therapy; 8 times over six months would be more than reasonable to make sure that petitioner was maintaining her status.

It is clear from the request and from petitioner's caregiver that this case is not about mere maintenance. The family and providers are seeking to improve petitioner's abilities. That said, I cannot conclude that the DHCAA modification was unwarranted. Previous history shows that petitioner already has a useful home program in place. She does have changes, and that is why the DHCAA granted 8 therapy sessions on an as needed basis. Anytime petitioner has problems the caregiver can request assistance from the therapist. Furthermore, petitioner's school therapist is also available to monitor petitioner's status.

Petitioner's caregiver noted that petitioner had Botox and Phenol injections in March, 2013. Obviously the DHCAA had no way of knowing those events would occur based upon a February, 2013 authorization request. I note that an MA recipient and her provider can always request an amendment to the PA authorization based upon changes during the authorization period. The Division of Hearings and Appeals is not an extension of the DHCAA and an appeal is not the proper forum to bring evidence of major changes in a person's condition after the PA request is adjudicated. Furthermore, it seems to me that the DHCAA anticipated possible changes in petitioner's needs by granting the 8 sessions on an as needed basis.

In the end I cannot find fault with the DHCAA response to this PA request. The modification allows the private therapist to keep abreast of changes that might need a response. Petitioner has home and school programs in place, and I agree that weekly private therapy simply is not necessary given those alternate

sources of assistance. I cannot agree that weekly PT is necessary because petitioner *might* have a problem with her hip alignment. The modification is a compromise to acknowledge that petitioner has changes in her condition that need to be addressed. Finally, amendments can always be requested if necessary.

CONCLUSIONS OF LAW

The DHCAA's modification of the PA request from weekly PT for 26 weeks to 8 session on an as needed basis was reasonable given that petitioner has a hands on home program and school PT in place.

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 14th day of May, 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 May 14, 2013.

Division of Health Care Access And Accountability