



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/148436

PRELIMINARY RECITALS

Pursuant to a petition filed March 29, 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 ["DHCAA"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on May 22, 2013.

The issue for determination is whether DHCAA was correct to modify PA for MA payment for PT for petitioner by approving PT for 4 visits instead of the 15 visits that were requested.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED] [REDACTED] (not present at May 22,
2013 Hearing)
c/o [REDACTED]
[REDACTED]
[REDACTED]

Represented by:

[REDACTED] [REDACTED], petitioner's mother
[REDACTED]
[REDACTED]

Respondent:

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

By: Pamela J, Hoffman, PT, DPT, MS [Ms. Hoffman did not appear at the May 22, 2013 Hearing, but submitted a letter dated May 8, 2013 with attachments.]

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

OTHER PERSON PRESENT:

[REDACTED] [REDACTED], PT, [REDACTED]

ADMINISTRATIVE LAW JUDGE:
 Sean P. Maloney
 Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (age 10 years; CARES # [REDACTED]) is a resident of Outagamie County.
2. Petitioner has diagnoses of Cerebral Palsy ["CP"], epilepsy, Von Willebrand's disease, hydrocephalus (multi-shunted), and scoliosis; he has a history of numerous health complications. Exhibits #1, #2 & #3.
3. On January 14, 2013 petitioner's provider, [REDACTED] of [REDACTED], Wisconsin, requested PA (P.A. # [REDACTED] dated January 14, 2013) for MA coverage of PT for petitioner at the rate of 15 visits over 26 weeks for 60 minutes each time with a requested start date of January 23, 2013 at a total cost of \$2,880.00; the requested 15 visits are to be used flexibly when petitioner is stable enough to participate in PT. Exhibits #1 & #3.
4. DHCAA modified P.A. # [REDACTED] by granting PT for 4 visits (instead of the requested 15 visits); DCHAA sent a letter to petitioner dated February 20, 2013 and entitled *BadgerCare Plus Notice of Appeal Rights* informing him of the modification.
5. Petitioner's Individualized Education Plan ["IEP"] indicates that petitioner is to receive 60 minutes per week of school PT to be delivered in his home; Occupational Therapy ["OT"] and PT attend petitioner's session at his home together and co-treat petitioner so the 60 minutes is split between them. Exhibits #1 & #3.
6. Documentation from petitioner's treating medical professionals shows that petitioner is at high risk from viral illnesses; he is very prone to serve problems with viruses that make him sick enough to be in the hospital for up to a month (this has happened to the point of near death in the past); this creates a strong need to keep petitioner free from viruses and requires homebound school instruction; precautions must be taken to limit petitioner's exposure to illness. Exhibit #3.
7. For the time period September 2012 to May 2013 petitioner was able to have only 22.4% (28 out of 125 scheduled PT sessions) of his school PT sessions; 33 (26.4%) of those sessions were missed due to concerns about exposing petitioner to illnesses that may be carried by the PT therapist from the school into petitioner's home; the remaining missed sessions (64 sessions // 51.2%) were missed due to other reasons (staff development; moving; "constipation and Madison"; etc.). Exhibit #3.
8. For the time period July 2012 to December 2012 petitioner was able to have 61.5% (8 out of 13 authorized PT sessions) of his PT sessions from [REDACTED]; these PT session took place at [REDACTED] (not at petitioner's home) and could be conducted in an isolated private room; [REDACTED] is a more controlled environment, with less children and controlled cleaning procedures, than petitioner's school and there is less concern about illnesses being transmitted to petitioner. Exhibit #3.
9. Petitioner's school PT ends after the 1st week of June and he does not receive any in the summer. Exhibit #3.
10. Petitioner's school PT and the requested PT have different goals. Exhibit #1 (page 3) & #3.
11. Petitioner's provider has provided objective measurements of petitioner's deficits showing that he lacks necessary Range of Motion ["ROM"] in his knees and that he requires the skills of a PT to address, among other things, fixing patterns, soft tissue limitations, and alignment. Exhibit #3.

DISCUSSION

By law, MA pays only for medically necessary and appropriate health care services when provided to currently eligible MA recipients. Wis. Admin. Code §§ DHS 107.01(1) & 107.17(1) (May 2009); See also, Wis. Stat. §§ 49.46(2) & 49.47(6)(a) (2011-12). In order for a service to be *medically necessary* it must meet several specific requirements. See, Wis. Admin. Code § DHS 101.03(96m) (December 2008).

DHCAA modified PA in this case. DCHAA states: “Physical therapy services were modified because the member’s school indicates the member is in need of skilled PT services and have included weekly PT in the member’s home into his Individualized Education plan (IEP). Neither the provider nor the school PT have documented the school PT is unable to keep the weekly appointments or re-schedule them as necessary for the member.” Exhibit #1 (page 2). DCHAA appears to be arguing that the requested PT would be duplicative of the school PT or that the requested PT would not be appropriate in light of the school PT. See, Wis. Admin. Code §§ DHS 101.03(96m)(b)6. & 9. (December 2008). However, neither is the case. Petitioner’s school PT and the requested PT have different goals. There is no dispute concerning this. Further, petitioner’s school PT is done as co-treatment with his school OT. Finally, for various reasons, scheduled sessions of petitioner’s school PT are very often missed.

DCHAA argues that the requested PT is not required to treat petitioner’s disability. See, Wis. Admin. Code § DHS 101.03(96m)(a) (December 2008). DCHAA bases this on its claim that petitioner’s provider has failed to provide “any objective measurements” of petitioner’s deficits and that there is no evidence that petitioner needs the skills of a PT to facilitate motor learning. Exhibit #1 (pages 3 & 4.). However, as reflected in the above *Findings of Fact*, such evidence has been provided by petitioner’s provider. Detailed documentation of this has been provided by petitioner’s provider. See, Exhibit #3.

It is noted to petitioner that his provider will not receive a copy of this *Decision*. In order to have the PT approved, petitioner must provide a copy of this *Decision* to [REDACTED] of [REDACTED], Wisconsin. [REDACTED] of [REDACTED], Wisconsin must then submit a *new* Prior Authorization request to receive the approved coverage.

CONCLUSIONS OF LAW

For the reasons discussed above, it was not correct to modify PA for MA payment for PT for petitioner by approving PT for 4 visits instead of the 15 visits that were requested.

NOW, THEREFORE, it is

ORDERED

That this matter be REMANDED to DCHAA and that DCHAA approve PA for the PT requested in PA # [REDACTED]; in order to obtain the PT petitioner must have [REDACTED] of [REDACTED], Wisconsin

submit a claim and new Prior Authorization ["PA"] request, together with a copy of this *Decision*, 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 29th day of May, 2013

\sSean P. Maloney
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 29, 2013.

Division of Health Care Access And Accountability