



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

In the Matter of

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

DECISION

MPA/148580

PRELIMINARY RECITALS

Pursuant to a petition filed April 05, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Department of Health Services denying a prior authorization (PA) request for physical therapy (PT), a hearing was held on May 21, 2013, at Waukesha, Wisconsin.

The issue for determination is whether the evidence submitted on behalf of Petitioner demonstrates that a prior authorization (PA) request for physical therapy (PT) meets the standards necessary for payment by the Wisconsin Medicaid program.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Represented by:

Atty. David E. Frank
Gierke Frank LLC
7604 Harwood Ave Ste 203
Wauwatosa WI 53213-2656

Respondent:

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

By: Pamela J. Hoffman, PT, DPT, MS – written submission

OIG
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Waukesha County.

2. A prior authorization request seeking Wisconsin Medicaid program payment for physical therapy (PT) for Petitioner was filed with the Medicaid program on or about February 20, 2013. The request was for 26 sessions at a frequency of once per week at a cost of \$5460.00. The PA requested Medicaid payment for therapeutic exercises, neuromuscular reeducation and therapeutic activities.
3. The PA noted Finding # 2 was denied. The Department did not find that the request met the Medicaid standards necessary for reimbursement by Medicaid program.
4. Petitioner is seven years old (03/28/2006). He lives in the community with his parents. His diagnosis is spinal muscular atrophy. He has no cognitive disability. He is in the 1st grade. He uses a power wheelchair at school. He does have PT in school for about 30 minutes per week. While there is summer school for activity classes there is no PT offered for the summer by the school system.
5. The goals noted for Petitioner on the PA were: 1) actively extending 25° from a sitting position with trunk support; 2) push up into a sitting position after falling onto his side with minimal assistant and verbal cues; 3) assist in transitions from supine to sitting by flexing head forward; 4) demonstrate active adduction of lower extremities for five repetitions and 5) roll from back to side in his bed to reposition himself. The PA notes that the fourth goal had been met by the time of this PA.

DISCUSSION

When determining whether to approve therapy, the Department must consider the generic prior authorization review criteria listed at *Wis. Admin. Code, §DHS 107.02(3)(e)*:

(e) *Departmental review criteria.* In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.

“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. DHS 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).

As with most public assistance benefits 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 is a Petitioner's burden to demonstrate that s/he qualified for the requested continued services by a preponderance of the evidence. It is not the Department's burden to prove that s/he is not eligible.

Further, I note that Medicaid is meant to provide the most basic and necessary health care services at a reasonable cost to a large number of persons and must authorize services according to the Wisconsin Administrative Code definition of medical necessity and other review criteria noted above. It is not enough to demonstrate a benefit; rather, all of the tests cited above must be met.

The OIG submitted a letter dated April 19, 2013 that explained in detail the rationale for the denial. See Ex. # 3. There were several reasons for the denial. The Department concluded that PA was not consistent with treatment of Petitioner's disability because the record doesn't indicate that the PT exercises could not be done in a home program. The Department also found the request to be duplicative of a program that could be provided in school and at home or in coordination between the two. The Department concluded that this PA was more of a convenience for the family as the request intimates that carry-over at home has been a challenge as it affects the parent-child relationship. Given these factors, the Department did not find that the request to be cost-effective nor an appropriate level of service.

Petitioner's mother argues that Petitioner's contractures have increased so range of motion is particularly important; that he does not get physical therapy in school except for therapy related to driving the power wheelchair and school necessities such as raising his hand. She notes that he weighs about 80 pounds and is too heavy to be lifted out of the wheelchair by school staff so is in the chair all day at school. She also argues that it is not fair to expect her to do therapy exercises for Petitioner just because she is a health professional (a chiropractor).

The arguments noted in the Department's April 19, 2013 letter are the more persuasive here. Petitioner's mother is not being held to a different standard than other parents. Rather, it is apparent that Petitioner is in need of some combination of strength, balance, endurance and coordination exercises and this is best accomplished via repetition and practice and a consistent home program and integration of activity into daily routines is really the only way to effectively do this. If this cannot be developed, monitored and coordinated with the school physical therapist Petitioner's family may want to have the private therapy provider submit a PA that designs such a program.

NOTE: Petitioner should be aware that Petitioner's provider will not receive a copy of this Decision. Petitioner's family may provide a copy to the provider.

CONCLUSIONS OF LAW

That the evidence does not demonstrate that the requested PT sessions meet the standards necessary for payment by the Wisconsin Medicaid program.

THEREFORE, it is

ORDERED

That this 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 Milwaukee,
Wisconsin, this 10th day of July, 2013

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

Wayne J. Wiedenhoef, Acting Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on July 10, 2013.

Division of Health Care Access And Accountability