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

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In the Matter of

██████  
c/o ██████  
██████████████████  
██████████████████

DECISION

MPA/148679

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 09, 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 May 13, 2013, at Elkhorn, Wisconsin.

The issue for determination is whether the Department erred in its denial of the prior authorization request No. ██████████ for Speech and Language Therapy (SLT).

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

██████  
c/o ██████  
██████████████████  
██████████████████

Respondent:

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

By: Theresa Walke, MS, CCC-SLP (in writing)  
Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

John P. Tedesco  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner is a resident of Walworth County. He is 9 years old. His diagnoses include autism and pervasive developmental disorder. He attends mainstream public school and receives SLT at school. His provider has treated him since 2011. This is the third PA requested by the provider.
2. Petitioner has achieved a level of intelligibility of 90% and articulation has ceased to be a focus of his therapy. The immediate PA addresses “social pragmatic skills.”
3. On February 25, 2013, petitioner’s provider, New Berlin Therapies filed a prior authorization request for SLT with a requested start date of 3/25/13 for one session per week for 26 weeks.
4. The PA request was returned to the provider for supplemental information on March 5, 2013.
5. The PA request was resubmitted on March 8, 2013.
6. The PA was denied on March 15, 2013
7. Petitioner filed a timely appeal.

### DISCUSSION

Speech and language therapy is an MA-covered service, subject to prior authorization after the first 35 treatment days. Wis. Admin. Code, §DHS 107.18(2). In determining whether to approve such a therapy request, the DHCAA employs the generic prior authorization criteria found at §DHS 107.02(3)(e). Those criteria include the requirements that a service be medical necessary, appropriate, and an effective use of available services.

In determining whether to approve such a therapy request, the Division employs the generic prior authorization criteria found at § DHS 107.02(3)(e). Those criteria include the requirements that a service be a medical necessity, appropriate, and an effective use of available services. *Id.*

It is the burden of the provider in a prior authorization case to establish that the requested item or services are medically necessary.

The Department submitted a letter on April 15, 2013 in which it explained the bases for the denial. The Department points out that the petitioner’s IEP in school addresses social pragmatic skills such as impulsivity and failure to recognize personal space. The Department argues that a specific goal of the IEP is for petitioner “to show age appropriate skills.” The Department also noted that the provider’s notes indicate that the school therapist disagrees that there is a need for additional therapy.

At the time of hearing, petitioner did not present any written evidence. Nor did he present any testimony of the provider or any other clinician or expert. Petitioner’s mother offered testimony that was disjointed and failed to explain the purposes of the sought therapy. For example, the mother stated her incredible frustration with the fact that her son gets into the fireplace ashes even though he has been told many times not to do so. Similarly, she explained that her son digs in the dirt near the steps of their current home. She explained that he is “obsessed” with playing in the dirt. This may all be a real problem for petitioner rather than being typical 9 year old behavior as it sounds to me), and it may be that the proposed therapy may be relevant or effective at addressing some perceived negative, but petitioner certainly did not convince me of that at the time set for hearing. Petitioner has failed to meet his burden.

### CONCLUSIONS OF LAW

The Department did not err in denying the PA for SLT.

**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 Madison,  
Wisconsin, this 24th day of June, 2013

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\sJohn P. Tedesco  
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 June 24, 2013.

Division of Health Care Access And Accountability