



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION

MPA/148990

PRELIMINARY RECITALS

Pursuant to a petition filed April 24, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Office of the Inspector General (OIG) in regard to Medical Assistance, a telephonic hearing was held on May 22, 2013, at Milwaukee, Wisconsin. The record was held open for 60 days for the petitioner's representative to submit new evidence to DHA and then for that evidence to be sent to the Office of the Inspector General for a reconsideration summary. However, petitioner's representative failed to submit any new evidence to DHA even by the date of this decision.

The issue for determination is whether the Department correctly denied the petitioner's prior authorization (PA) request for individual speech therapy once weekly for 12 weeks.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Representative:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Theresa Walske, speech therapy consultant
Office of the Inspector General
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 4 year old girl who resides in Milwaukee County in a private residence with her parents and grandmother. Her mother and representative is [REDACTED].
2. The petitioner is diagnosed with mild/moderate autism and some speech language deficits.
3. Since September, 2012, petitioner has been attending the Craig Montessori School (part of the Milwaukee Public School system) for 5 half days per week. At school, petitioner receives special education services for one hour per day (including group speech therapy services and social skill development). Petitioner very much enjoys attending school.
4. The petitioner's mother applied for individual speech therapy through the Milwaukee School District. The Milwaukee School District determined that [REDACTED] did not qualify for speech therapy at her public school, and denied petitioner's request for speech therapy through the Milwaukee School District.
5. Petitioner does have some speech and language receptive and expressive deficits, and some problems with social skills. Petitioner's mother is concerned about the petitioner's progress in her language abilities and is also concerned that [REDACTED] does not fully understand most verbal directions. Petitioner's vocabulary for single words is very good and her speech is very clear. She is able to read most words by phonetically analyzing the letters.
6. On August 30, 2012, petitioner was evaluated by the Wisconsin Early Autism Program. As of the May 22, 2013 hearing date, petitioner was placed on a waiting list for intensive in-home autism services.
7. The petitioner's November, 2012 School Individual Educational Plan (IEP) did not indicate that petitioner required individual speech therapy through the school district.
8. On or about February 8, 2013, petitioner's provider, Children's Hospital of Wisconsin in Milwaukee, requested prior authorization (PA) for MA coverage of once weekly individual, private speech therapy for 12 weeks at a cost of \$4,752.00. See Exhibit 2.
9. On or about March 25, 2013, the Office of the Inspector General (OIG) sent a notice to the petitioner's parents denying the prior authorization request for private, individual speech and language therapy because the submitted documentation did not establish the medical necessity of the requested private SLT as required by the Wisconsin Administrative Code.
10. The record was held open for petitioner's representative to submit documentation to establish the medical necessity of the requested private speech therapy, and for an OIG reconsideration summary and petitioner's representative's response. However, petitioner's representative failed to submit any new evidence to DHA even by the date of this decision. See above Preliminary Recitals.
11. The petitioner's representative was unable to provide reliable evidence to refute the Department's evidence which denied petitioner's speech therapy request due to failure to establish documentation of the medical necessity of the PA request individual speech therapy.

DISCUSSION

Speech and language therapy is an MA-covered service, subject to prior authorization after the first 35 treatment days. Wis. Adm. Code § DHS 107.18(2). In determining whether to approve such a therapy request, the Bureau 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. “Medically necessary” services are those “required to prevent, identify or treat a recipient’s illness, injury, or disability. Wis. Adm. Code § DHS 101.03(96m)(a).

Included in the definition of “medically necessary” at § DHS 101.03(96m)(b) are the requirements that services be of proven medical value or usefulness, that services not be duplicative of other services, and that services be cost effective when compared to alternative services accessible to the recipient. When speech therapy is requested for a school age child in addition to therapy provided by the school system, the request must substantiate the medical necessity of the additional therapy as well as the procedure for coordination of the therapies. Prior Authorization Guidelines Manual, Speech Therapy, page 113.001.02. It is up to the provider to justify the provision of the service. Wis. Adm. Code § DHS 107.02(3)(d)6.

During the fair hearing process, it is generally accepted that the state or county agency, as the party which has taken the action appealed from bears the burden of proof of the propriety of that action. *See State v. Hanson*, 98 Wis.2d 80, 295 N.W.2d 209 (Ct.App.1980). Like most public assistance benefits, however, 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 was petitioner’s burden to demonstrate that she qualified for the requested continued speech and language services.

An applicant will need to demonstrate that the procedure for which he or she seeks approval is “**medically necessary.**” A “medically necessary” service is

[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;

5. **Is of proven medical value or usefulness** and, consistent with s. HFS 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).

The crux of the Division’s denial of petitioner’s request is that while [REDACTED] has some speech and language problems, petitioner’s expressive and receptive language scores were basically age appropriate and within an average range. The petitioner’s representative did not submit evidence to establish the medical necessity for individual speech and language therapy. In addition, as explained in petitioner’s IEP, petitioner’s language skills are at a level that her expressive and receptive abilities are functional and she is understood by her teachers and peers. The question to be determined by the MA program was not

just whether some problems are present, but why the specific skill of a private SLP is medically required for one session per week for 12 weeks, given the lack of documentation for the requested SLP services. The MA definition of medical necessity requires that services provided be basic and necessary. Furthermore, there is no individual school speech therapy because the petitioner did not qualify for any individual speech therapy sessions through the Milwaukee School District.

Ms. Walske in her detailed 7 page May 2, 2013 denial summary (with attachments) provided many valid reasons why the petitioner's representative failed to establish the medical necessary of the requested private speech therapy. The petitioner's parents and the SLT provider were unable to establish evidence to convincingly refute those reasons for denial in regard to petitioner's request for private speech and language therapy. Furthermore, Ms. Walske correctly referred to prior DHA hearing decisions which are relevant to the instant case:

MPA-11/113233 – The requested ...ST, while it would be beneficial as would any extra services, was not necessary. To receive it would be a bonus, **but MA is meant to cover basic and necessary services, not every possible beneficial services.**

MPA/145440 - . . . The argument that the school-based regimen is only in group or classroom setting, and the private therapy would be 'one-to-one' does not establish that the private regimen is needed and prior decisions of the DHS have sustained the Department, repeatedly, on this point. It could very well be that petitioner requires more intensive private SLT than school can provide. However, **the request must show that need and why the school is insufficient.**"

MPA-5/116573 - . . . The MA program is not required to cover all of the services that a recipient or his parents would like to have him get, **only those that meet the MA program definition of medical necessary.** . .

MPA-16/76555 - Duplication is not avoided by using somewhat different terminology to describe the goals because it is unlikely that any two providers are going to use exactly the same words. Nor can the provider merely use somewhat different means to reach the goals because if goals are similar the result should be similar. **Medical assistance is meant to provide basic services at a reasonable cost to a large number of persons** and is the payer of last resort, principles not possible if the program reimburses recipients for each bit of therapy that is subtly different from that already provided.

(Emphasis added).

In reviewing the petitioner's mother's testimony and submissions, I agree with Ms. Walske's assessment that while those evaluations, school and medical reports are helpful in understanding ██████'s medical problems, those reports did not establish why private speech and language therapy is medically necessary for the petitioner as of February, 2013. It is the responsibility of the fee-for service provider to justify MA coverage of the service to the Division. The fee-for-service provider has not established that ██████ has specific speech problems which require the skilled expertise of a private speech therapist, especially given that she tests and performs expressive and receptive language basically within age appropriate norms. While the petitioner's parents' efforts and desire for ██████ to achieve as much progress as possible in her speech and language skills is commendable, the petitioner has not established that the requested private SLT is medically necessary. Accordingly, for the above reasons, I conclude that the Department correctly denied the petitioner's prior authorization (PA) request for once weekly individual private speech therapy for twelve (12) weeks due to lack of established medical necessity.

CONCLUSIONS OF LAW

The Department correctly denied the petitioner's prior authorization (PA) request for once weekly individual private speech therapy for twelve weeks due to lack of established medical necessity.

THEREFORE, it is

ORDERED

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 17th day of September, 2013

\sGary M. Wolkstein
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 September 17, 2013.

Division of Health Care Access And Accountability