



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION

MPA/149447

PRELIMINARY RECITALS

Pursuant to a petition filed May 14, 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 [“DCHAA”] in regard to Medical Assistance [“MA”] , a Hearing was held via telephone on June 19, 2013.

The issue for determination is whether DCHAA was correct to deny Prior Authorization [“PA”] for MA payment for Occupational Therapy [“OT”] for petitioner.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED] (not present at June
19, 2013 Hearing)
c/o [REDACTED]
[REDACTED]
[REDACTED]

Represented by:

[REDACTED], petitioner’s mother
[REDACTED]
[REDACTED]

Respondent:

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

By: Mary Chucka, OTR [Ms. Chucka did not appear at the June 19, 2013
Hearing, but submitted a letter dated May 30, 2013.]

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

OTHER PERSONS PRESENT:

[REDACTED] petitioner’s Occupational Therapist [“OT”]
[REDACTED] petitioner’s mother’s boyfriend

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

FINDINGS OF FACT

1. Petitioner (13 years old) is a resident of Manitowoc County.
2. Petitioner suffered a Traumatic Brain Injury ["TBI"] at 3 or 6 months of age secondary to abuse; he has diagnosis of Cerebral Palsy ["CP"], epilepsy, cortical visual impairment, and muscle incoordination; he has decreased Upper Extremity ["UE"] Range Of Motion ["ROM"], UE hypertonia, poor motor planning, and sensory integration dysfunction; he was adopted by his mother about 5 years ago.
3. On February 28, 2013 petitioner's provider, [REDACTED] [REDACTED] Inc. of Green Bay, Wisconsin, requested PA (P.A. # [REDACTED] dated February 28, 2013) for MA coverage of OT for petitioner at the rate of 2 times per week for 45-60 minutes each time for 12 weeks with a requested start date of February 18, 2013 at a total cost of \$5,188.08.
4. On April 9, 2013 DCHAA denied P.A. # [REDACTED] for MA coverage of OT for petitioner; DCHAA sent a letter to petitioner dated April 9, 2013 and entitled *BadgerCare Plus Notice of Appeal Rights* informing him of the denial.
5. On February 18, 2013 he had an *Occupational Therapy Initial Evaluation* which petitioner's provider used in filing provider P.A. # [REDACTED] for MA coverage of OT for petitioner.
6. In May 2013 petitioner had a vegus nerve stimulator implanted and started new medication; his seizures are now more under control (he was having extreme seizures).

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). One of the requirements for *medical necessity* is that the service must be required to prevent, identify, or treat a recipient's illness, injury, or disability. Wis. Admin. Code § DHS 101.03(96m)(a) (December 2008).

In this case it is not possible to determine if the requested OT is be required to prevent, identify, or treat petitioner's illness, injury, or disability because petitioner's condition has changed materially since the time of the February 18, 2013 *Occupational Therapy Initial Evaluation*. In May 2013 petitioner a vegus nerve stimulator implanted and started new medication. His seizures are now more under control. Petitioner should request that his provider file a new PA request based on an evaluation of his current condition.

The new PA request should include a complete, current OT evaluation of petitioner's current functional status with all limitations identified and reported in specific, objective measurable terms. It is noted that DCHAA states that "[w]hen a new PA request is received with this information, it will be approved."

DCHAA summary letter dated May 30, 2013 ["Summary":], page 3. DCHAA again states "that if the requesting provider submits a new PA request with a comprehensive evaluation and plan of care that supports a skilled level of service, the PA request will be approved." Summary pages 3-4.

CONCLUSIONS OF LAW

For the reasons discussed above, was correct to deny PA for MA payment for OT for petitioner.

NOW, 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 16th day of July, 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 July 16, 2013.

Division of Health Care Access And Accountability