



FH
[REDACTED]

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

In the Matter of

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

DECISION

MPA/149815

PRELIMINARY RECITALS

Pursuant to a petition filed June 06, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the respondent in regard to Medical Assistance, a telephone hearing was held on July 10, 2013.

The issue for determination is whether the respondent has correctly denied the petitioner's prior authorization request for coverage of speech & language therapy.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Respondent:

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

By: Theresa Walske, MS, CCC-SLP
Office of the inspector General
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The petitioner has been diagnosed with nonverbal learning disorder, and he demonstrates receptive and expressive language disorders secondary to this diagnosis.
3. On March 5, 2013, New Berlin Therapies, SC (NBT), the petitioner's fee-for-service speech & language therapy (SLT) provider, requested prior authorization for weekly SLT for 32 weeks, in Prior Authorization Request No. [REDACTED]. The PA request sought approval for backdated therapy from January 1, 2013, continuing through September 6, 2013. By a letter dated April 22, 2013, the respondent denied the request.
4. On June 6, 2013, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the denial of reimbursement for speech & language therapy.
5. Petitioner was previously enrolled in parochial school, but has returned to public school. Petitioner's parochial school utilized a "Service Plan," while the public school utilizes an Individualized Education Program (IEP). A Service Plan dated April 18, 2012, and a subsequent IEP dated March 27, 2013, were submitted in support of the PA request. His Individualized Education Plan indicates that school therapy is working with him on increasing his expressive language utilizing appropriate syntax in order to communicate with peers and follow classroom routines. See, Exhibit 2.
6. The PA request specifies that the SLT via NBT "...is provided in a one-on-one setting focusing on processing skills, abstract language and sequencing thoughts and ideas. These skills are essential for utilizing appropriate pragmatic communication skills, responding appropriately to questions and participating in conversational exchanges across all environments including home and community." Exhibit 2.

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 respondent 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. Included in the definition of "medically necessary" at §DHS 101.03(96m) are the requirements 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 113.001.03. It is up to the provider to justify the provision of the service. §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 is petitioner's burden to demonstrate that he qualified for the requested speech and language services.

Prior hearing decisions have held consistently that where speech therapy is provided in school, it would not be cost effective for MA to cover private therapy. If the private therapy covers a situation that school therapy does not address, it has been found that the services are not duplicative. See, for example, the final Decision in DHA Case No. MPA-48/16180, (August 21, 1997) where the evidence showed that the petitioner had a unique oral deficiency that the school therapist was not trained to address. Also see the Decision in DHA Case No. MPA-51/41838 (November 18, 1999), where the school therapist was working on building vocabulary while the private therapist was working on the physical process of vocalizing sounds.

In this case the goals and comments of the NBT and school therapists are very similar. The PA request prepared by the provider fails to establish that they are working on substantively different areas of speech and language development.

As noted above, it is the provider's duty to justify the provision of the services. In the PA Request, the provider states that the private therapy is being coordinated with the school-based speech & language therapist, briefly stating that, "[c]oordination with school therapist has been completed via phone contact. Exhibit 2. The PA request was returned to the provider requesting, among other things, that the provider attach supportive documentation and supply written evidence of treatment coordination. The record does not indicate that anything pertaining to coordination was attached to the resubmission. In response to the request, the provider wrote:

Contact with school therapist who is providing treatment in [REDACTED]'s parochial school has been completed via phone contact for coordination of goals. School therapy has focused primarily on expressive language with appropriate syntax in order to communicate with peers and agility to follow classroom routines. School therapy is in a group setting.

Exhibit 2. The respondent argues that this is insufficient evidence of coordination. I agree that the coordination information is inadequate, considering that coordination is a specific requirement in situations such as these. I am also confused by the provider's submission of the public school IEP with a start date of March 27, 2013, without any apparent coordination plan with the public school. Only the parochial school is referenced by the provider.

Based upon the record before me, I am unable to determine any meaningful coordination or collaboration between the therapists, nor an indication of any specific area of petitioner's development that the school therapist is unable to address.

Finally, petitioner's provider notes that the school therapist works on education based skills and the private therapy is for more general communication needs. See, Exhibit 2. Previous decisions have refused to accept that the difference between school and private therapy can be that the school therapy addresses school concerns while the private therapy addresses home/community concerns. See, Final Decision DHA Case No. MPA-37/80183, dated February 16, 2007. Likewise, the argument that the school-based regimen is only in group or classroom settings, and the private therapy would be "one-to-one," does not establish that the private regimen is needed. As respondent noted, the provider has failed to establish documented progression by the petitioner which would serve to demonstrate the necessity of one-on-one therapy.

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 SLT is insufficient. Here, the school records indicate that the school therapist is working on essentially the same speech & language skills as the private therapist. Likewise, the record does not establish a meaningful coordination of the two speech & language regimens. Medical assistance is meant to provide basic services and equipment to a large number of people at a

reasonable cost to the government and taxpayers. The PA request procedure is intended to ensure that medically necessary services are provided. While the petitioner's parents' efforts and desire for petitioner to achieve as much progress as possible in his speech therapy is commendable, the petitioner has not established that the requested continued private SLT is medically necessary and/or properly coordinated.

Based upon a review of the evidence in this record, I find that the petitioner's provider has not established by clinical documentation the medical necessity of the additional private therapy, and the respondent's denial must be affirmed.

CONCLUSIONS OF LAW

Petitioner's provider has not shown the medical necessity of private SLT because petitioner receives comprehensive SLT in school and the MA-defined medical necessity for additional fee-for-service SLT is not shown by the preponderance of the evidence in this record.

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

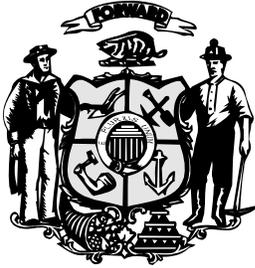
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

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 13th day of September, 2013

\sPeter McCombs
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 13, 2013.

Division of Health Care Access And Accountability