



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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DECISION

MPA/150098

PRELIMINARY RECITALS

Pursuant to a petition filed June 17, 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 July 15, 2013, at Green Bay, Wisconsin.

The petitioner's occupational therapist, Susan Parker, represented 10 year old ██████ ██████ during that hearing. The petitioner's mother, ██████ ██████, also appeared at that hearing. During that hearing, petitioner's representative, Susan Parker, requested that the record be held open for documents to be submitted to the Division of Hearings and Appeals, and then for those documents to be sent to the Office of the Inspector General (OIG) for a reconsideration decision with an opportunity for a reply by Ms. Parker.

This Administrative Law Judge (ALJ) sent a July 30, 2013 cover letter to Ms. Chucka at the Office of the Inspector General (OIG) with a copy of the following documents which were received at DHA on July 22, 2013: a) a July 15, 2013 cover letter by Ms. Susan Parker, OTR; b) a July 15, 2013 responsive letter by Ms. Parker; c) a detailed July 10, 2013 letter by Ms. Parker in response to the Department's June 25, 2013 denial summary by Ms. Chucka (Exhibit 1); and d) a copy of the decision in MPA-65/1111878 and related articles. In that same letter, this ALJ request that Ms. Chucka review the enclosed copies of letters/documents, and submit a detailed reconsideration summary to me at the Division of Hearings and Appeals by August 12, 2013 with a copy of that reconsideration summary letter to be sent to the petitioner's representative. The petitioner's representative requested and was granted until August 19, 2013 to respond to Ms. Chucka's reconsideration summary.

Ms. Chucka timely submitted an August 9, 2013 a six page, detailed reconsideration to DHA and the petitioner's representative. In that reconsideration, OIG confirmed that after reviewing the petitioner's documents, it continued to assert that the petitioner's provider has not established the requested OT services are medically necessary and covered services. The petitioner's representative failed to submit to DHA any response to that reconsideration summary by the August 19, 2013 deadline or even by the date of this decision.

The issue for determination is whether the Department correctly denied the petitioner's June, 2013 prior authorization (PA) request for occupational therapy (OT) services for the petitioner.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Representative:

Susan Parker, OTR
Cerebral Palsy, Inc.
2801 South Webster Avenue
Green Bay, WI 54301

Respondent:

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

By: Mary Chucka, occupational 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 10 year old resident of Brown County who resides in a private residence with her mother. The petitioner receives MA benefits.
2. The petitioner is diagnosed with Autism, Attention Deficit Hyperactivity Disorder (ADHD), pervasive developmental disorder and developmental delays. At 4 years of age, petitioner was diagnosed with a seizure disorder but those seizures were reported to be controlled with medication and the placement of a Vagal nerve stimulator at age five. She has medical and behavioral problems with some motor skills, and sensory issues. See Exhibits 1 and 2.
3. On or about April 9, 2013, petitioner’s provider, Cerebral Palsy, Inc. of Green Bay, made a prior authorization request (PA # [REDACTED]) on behalf of the petitioner for Occupational Therapy (OT) services at a frequency of once per week for 24 weeks with total requested charges of \$5,187.60. See Exhibit 2.
4. During the April/May, 2013 PA request period, petitioner attended the fourth grade at Heritage School in an Individualized Educational Program (IEP) which was developed and implemented for her in the school.
5. On or about May 24, 2013, the Office of the Inspector General (OIG) sent a notice to the petitioner denying the prior authorization request for OT because the PA request did not include documentation to establish the medical necessity for OT services based upon the requirements of the Wisconsin Medicaid Forward Health program and that some of the requested OT services were not covered services.
6. DHCAA provided the following reasons for the denial of OT services for the petitioner: a) the PA request did not establish with sufficient justification or documentation that the specific expertise of a skilled occupational therapist was medically necessary or appropriate for the petitioner; b) the provider’s evaluation of [REDACTED] lists that she can do some ADL’s but requires assistance with

others, does not specifically correlate what particular deficit is the basis for her need for assistance or OT services; c) an OT provider must correlate functional ADL status with specific limitations, and that therapist needs to rule out other possible reasons for functional limitations when asserting problems should be addressed by OT therapy services; d) OIG questions OT therapy for “sensory sensitivities” or “behavioral problems” as effective for individuals with autistic spectrum disorder; and e) the provider has not established that the requested OT services are appropriate and effective for the petitioner. See Exhibit 1.

7. In her August 9, 2013 reconsideration, OIG asserted the following reasons for its continued denial for the requested private OT services for petitioner: a) the provider did not offer specific objective documentation to establish what specific steps or actions in OT services would help ██████ to be more independent in several ADL tasks (brushing teeth, drying off, washing in shower etc); b) the provider did not provide sufficient information in the PA request or OT evaluation to establish that OT is the proper service to help petitioner eliminate inappropriate touching of others. Such touching is a “behavior” which could be addressed in other medical manners than OT; c) OIG had many valid questions about the appropriateness of OT for other “behavior” problems of petitioner such as “██████ always needing to be carrying bags of things” or “██████ is scared by loud noises and will panic” or “██████ does not know what to do to calm herself when upset” (perhaps these are psychological issues which would be more appropriately be addressed by a psychologist; and d) the provider must provide evidence to objectively measure the identified problems at the start of care and measure any improvement during the course of treatment (for example, no baseline report for need for OT for “postural strength.”
8. The petitioner’s representative failed to submit to DHA any response to that reconsideration summary by the August 19, 2013 deadline or even by the date of this decision.

DISCUSSION

Occupational therapy (OT) is an MA-covered service, subject to prior authorization after the first 35 treatment days per spell of illness. Wis. Admin. Code §DHS 107.17(1),(2). In determining whether to approve OT services, the Division must consider the generic prior authorization review criteria listed at Wis. Admin. Code §DHS 107.02(3)(e). Those criteria include the requirement that the requested service be **medically necessary**, and that it not duplicate other available services. *Ibid.* To be medically necessary, a service must be required to treat a recipient's illness or disability. See Wis. Admin. Code §DHS 101.03(96m). OT can certainly be an appropriate service for dealing with the motor skills deficits that often accompany the petitioner’s diagnosis. See *Prior Authorization Guidelines Manual*, 112.001.

The OIG denied the request for private OT services because petitioner did not establish the medical necessity, appropriateness and effectiveness of the OT services. 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. The mere assertion, even of a doctor or clinician, that a person needs a specific service *is not the same thing* as demonstrating with factual evidence the nature of the deformity, limitations, measurements of such deformities or limits, and clinical evidence that establishes such services are in fact medically necessary as that term is defined by the MA Program, and as applied to the specific services sought.

In this case, the OIG consultant denied the petitioner’s PA request for the reasons explained in Findings of Fact # 6 and # 7 above. At the request of petitioner’s representative and therapist, the record was held open for documents to be sent to the Division of Hearings and Appeals (DHA), and then to be submitted to the OIG for a reconsideration decision. Ms. Chucka submitted an August 9, 2013 reconsideration to

DHA and the petitioner's representative (Ms. Susan Parker). In that reconsideration, OIG confirmed that after reviewing the petitioner's documents, it continued to assert that the petitioner's provider has not established the requested OT services are medically necessary and appropriate. However, petitioner's representative failed to submit to DHA any response to that reconsideration summary by the August 19, 2013 deadline or even by the date of this decision.

The burden of proof was upon the petitioner and his provider to establish the medical necessity of the requested OT services. The petitioner and her provider have not met that burden. While the hearing record is clear that [REDACTED] has serious medical and behavioral problems, the petitioner has not established with sufficient clinical evidence that the requested private OT services are medically necessary or appropriate. Accordingly, the Division correctly denied the petitioner's April, 2013 prior authorization (PA) request for private occupational therapy (OT) services for the petitioner because the petitioner failed to establish the medical necessity and appropriateness of those requested services.

CONCLUSIONS OF LAW

The Division correctly denied the petitioner's April, 2013 prior authorization request for occupational therapy services because the petitioner failed to establish the medical necessity and appropriateness of those requested services.

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 18th day of October, 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 October 18, 2013.

Division of Health Care Access And Accountability