



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

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In the Matter of

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

DECISION

MPA/150139

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 18, 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 July 24, 2013, at Barron, Wisconsin.

The issue for determination is whether the petitioner is entitled to medical assistance reimbursement for occupational ██████████.

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: Mary Chucka

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

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner is a resident of Barron County.

2. On April 18, 2013, the petitioner with ██████'s ██████ ██████ requested 26 weeks of twice-weekly occupational ██████ at a cost of \$6,455. The Office of Inspector General returned the request for more information on May 2, 2013. ██████'s ██████ provided additional information on May 7, 2013. The Office of Inspector General denied the request on May 28, 2013.
3. The petitioner is an eight-years-old boy diagnosed with Prader-Willi Syndrome, a genetic condition characterized by poor coordination, mental deficiencies, weakness, and constant hunger. ██████'s ██████ indicates that he has "hypotonia and poor coordination" along with "decreased safety awareness, impaired cognition, impaired balance, postural abnormalities, decreased strength, and impaired sensory integration," which has led to "decreased ability to perform age-appropriate ADLs and IADLs." *Prior Authorization Request.*
4. ██████'s ██████'s set the following goals for the petitioner:
  - a. [Petitioner] will successfully achieve developmental increase to BOT [sic] score of 6 years, 0 months in all fine motor categories by 10/2013.
  - b. [Petitioner] will increase finger/hand strength, improve maturity of grasp, dynamic balance, motor planning, and improve bilateral coordination in order to complete total body dressing with at least 3 types of shirts (i.e. button down, zipper, snaps) and 2 types of pants (i.e. jeans, cotton) and don/tie shoes in minutes or less with no more than 1 verbal cue by 10/15/2013.
  - c. [Petitioner] will increase BUE AROM and hand strength in order to complete independent toileting (including thorough hygiene with bowel movement) without cues 5:5x by 10/15/2013.
  - d. [Petitioner] will increase self-help skills, attention to detail/sequencing, balance, and bilateral integration in order to complete all steps of thorough bathing (alter sit/stand in tub or shower) without DME and no more than 3 verbal cues 5:5x by 10/15/2013.
  - e. [Petitioner] will increase self-help skills, sequencing BUE strength, coordination, and bilateral integration in order to cut medium foods (i.e. apple, cheese, really tender meats) independently without cues 5:5x by 10/15/2013.
  - f. In order to support community integration, [Petitioner] will increase self-regulation, functional vision, and body awareness to go through a complete shopping outing with his caregiver without bumping into ANY items in the store 3;3x by 10/15, 2013.
5. Each of ██████'s ██████'s goals listed the following means to accomplish that goal: "Skilled OT treatment will focus on improvement of coordination, FM skills, attention to task, hand strength/activity tolerance, and self-awareness though therapeutic activity, self-cares, therapeutic exercise, and MMR techniques to include reflex integration, NDT approaches, biomechanical FOR, purposeful activity, positioning, skilled cueing, activity grading, and patient/caregiver education."
6. The petitioner has received occupational therapy through his school district since he first enrolled. He currently receives two weekly 30-minute sessions a week. The goals of the therapy are to improve his skill at forming the letters of the alphabet and numbers correctly and writing a five to six-word sentence with "proper formation, placement, and spacing of 95% of the letters/words in ¾ trials." *2012-13 IEP.*
7. The petitioner received occupational therapy from SPOTS House from September 2009 through March 2012. He left there because the program changed therapists and the facility was a 45-minute drive from his house.
8. The petitioner began receiving occupational therapy twice a week from ██████'s ██████ in January 2013.

9. The petitioner has not carried over progress made in therapy sessions to his home.

### DISCUSSION

Medical assistance covers occupational therapy if the recipient obtains prior authorization after the first 35 visits. Wis. Adm. Code, § DHS 107.17(2)(b). When determining whether a service is necessary, the Division must review, among other things, the medical necessity, appropriateness, and cost of the service, the extent to which less expensive alternative services are available, and whether the service is an effective and appropriate use of available services. Wis. Adm. Code, § DHS 107.02(3)(e)1.,2.,3.,6. and 7. “Medically necessary” means 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;
  2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
  3. Is appropriate with regard to generally accepted standards of medical practice;
  4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
  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.

An effective proposal for occupational therapy must follow a several-step process. It must first determine the nature of the recipient’s disability and the functional limitations that that disability imposes upon him. This requires tests that identify the causes of these functional limitations. Second, it must set goals to help the recipient live with the problems. Third, it must develop a treatment plan that has a realistic chance of accomplishing the goals. In addition, the treatment must actually require the services of an occupational therapist or else it is not a cost-effective use of the medical assistance program’s limited funds.

The petitioner is an 8 ½-year-old boy diagnosed with Prader-Willi Syndrome, a genetic condition characterized by poor coordination, mental deficiencies, weakness, and constant hunger. [REDACTED]’s [REDACTED] indicates that he has “hypotonia and poor coordination” along with “decreased safety awareness, impaired cognition, impaired balance, postural abnormalities, decreased strength, and impaired sensory integration,” which has led to “decreased ability to perform age-appropriate ADLs and IADLs.” His occupational therapist, [REDACTED] of [REDACTED]’s [REDACTED], has set the following goals for him:

- a. [Petitioner] will successfully achieve developmental increase to BOT [sic] score of 6 years, 0 months in all fine motor categories by 10/2013.
- b. [Petitioner] will increase finger/hand strength, improve maturity of grasp, dynamic balance, motor planning, and improve bilateral coordination in order to complete total body dressing with at least 3 types of shirts (i.e. button down, zipper, snaps) and 2 types of pants (i.e. jeans, cotton) and don/tie shoes in minutes or less with no more than 1 verbal cue by 10/15/2013.

- c. [Petitioner] will increase BUE AROM and hand strength in order to complete independent toileting (including thorough hygiene with bowel movement) without cues 5:5x by 10/15/2013.
- d. [Petitioner] will increase self-help skills, attention to detail/sequencing, balance, and bilateral integration in order to complete all steps of thorough bathing (alter sit/stand in tub or shower) without DME and no more than 3 verbal cues 5:5x by 10/15/2013.
- e. [Petitioner] will increase self-help skills, sequencing BUE strength, coordination, and bilateral integration in order to cut medium foods (i.e. apple, cheese, really tender meats) independently without cues 5:5x by 10/15/2013.
- f. In order to support community integration, [Petitioner] will increase self-regulation, functional vision, and body awareness to go through a complete shopping outing with his caregiver without bumping into ANY items in the store 3;3x by 10/15, 2013.

█'s █ has identified the petitioner's problems and set proper goals. Those goals do not duplicate those set by the school district. The problem is that there is no way to judge whether its program will allow the petitioner to meet these goals because each goal is followed by the exactly the same plan of care. That plan states: "Skilled OT treatment will focus on improvement of coordination, FM skills, attention to task, hand strength/activity tolerance, and self-awareness though therapeutic activity, self-cares, therapeutic exercise, and MMR techniques to include reflex integration, NDT approaches, biomechanical FOR, purposeful activity, positioning, skilled cueing, activity grading, and patient/caregiver education." This statement is a kitchen-sink approach that is so broad that it provides no insight into what particular means █'s █ plans to use to reach each particular goal. It is not enough to cite a general statement of all the techniques the therapist uses to treat any problem. Improving the petitioner's ability to use the toilet requires something different than improving his ability to cut his food, and the proposal should reflect this. Providing specific information on treating the petitioner is important because the Office of Inspector General and the Division of Hearings and Appeals must objectively evaluate the therapy proposal, which they cannot do if they do not know what techniques the provider is using.

The objective evaluation is especially important in this matter because Wis. Admin. Code, § 107.17(3)(e) requires the Department deny additional services if the "recipient has shown no progress toward meeting or maintaining established and measurable treatment goals over a six-month period, or the recipient has shown no ability within six months to carry over abilities gained from treatment in a facility to the recipient's home." The petitioner has received therapy both from his school district and another provider, SPOTS House, for years with little evidence of progress. His mother states that he had made progress, but that this progress disappeared when he was out of therapy. Her statement actually confirms that the petitioner has not shown an ability to carry over goals from the facility to his home, and thus further therapy should not be approved. The petitioner's therapist did testify that he has made some progress in bathing, tying his shoes, and getting dressed, but without a specific description of the techniques used to accomplish this, it is not possible to evaluate whether the therapy led to the improvement. Moreover, all evidence of therapy is rather vague in that it consists of narrative statements rather than any specific measurements. Finally, the petitioner will soon be nine years old. His affliction is not progressive, so one would expect some progress to occur as he gets older regardless of whether he receives therapy.

The petitioner has the burden of proving by the preponderance of the credible evidence that therapy is necessary. He may have improved his ability to perform certain tasks, but there is insufficient evidence that his therapy has led to these improvements or that further therapy will lead to more improvement. The requested therapy costs over \$6,000. Based upon the evidence before me, I find that this request is neither cost-effective nor medically necessary.

**CONCLUSIONS OF LAW**

The requested occupational therapy is not medically necessary.

**THEREFORE, it is**

**ORDERED**

The petitioner's 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 19th day of August, 2013

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\sMichael D. O'Brien  
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 August 19, 2013.

Division of Health Care Access And Accountability