



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

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

DECISION

MPA/150141

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 19, 2013, under Wis. Stat., §49.45(5), to review a decision by the Division of Health Care Access and Accountability (DHCAA) to deny Medical Assistance (MA) authorization for speech therapy (ST), a hearing was held on August 15, 2013, by telephone. A hearing set for July 31, 2013 was rescheduled at the petitioner's request.

The issue for determination is whether petitioner has shown sufficient improvement to warrant continued services.

**PARTIES IN INTEREST:**

Petitioner:

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

Respondent:

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

By: Written submission of Theresa Walske, ST Consultant

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is an 11-year-old resident of Wood County who receives MA.
2. On April 23, 2013 ██████ ██████ ██████ requested prior authorization for six months of twice weekly ST, PA no. ██████. The request was for both speech/language and eating. By a letter dated June 3, 2013, the DHCAA denied the request.

3. Petitioner has FG Syndrome, a genetic condition that causes developmental delays, hyperactivity, low muscle tone, and behavior along the autism spectrum. He does not have a physiological impairment that prevents him from eating properly.
4. Petitioner has been receiving ST since 2003. An evaluation done in December, 2011 shows virtually identical ST goals as one done in January, 2013 prior to this PA request.
5. Petitioner receives ST in school.

### DISCUSSION

Speech therapy is covered by MA under Wis. Admin. Code, §DHS 107.18. Generally it is covered without need for prior authorization (PA) for 35 treatment days, per spell of illness. Wis. Admin. Code, §DHS 107.18(2)(b). After that, PA for additional treatment is necessary. If PA is requested, it is the provider's responsibility to justify the need for the service. Wis. Admin. Code, §DHS 107.02(3)(d)6. If the person receives therapy in school or from another private therapist, there must be documentation of why the additional therapy is needed and coordination between the therapists. Prior Authorization Guidelines, Physical, Occupational, and Speech Therapy, Topics 2781 and 2784.

In reviewing a PA request the DHCAA must consider the general PA criteria found at §DHS 107.02(3) and the definition of "medical necessity" found at §DHS 101.03(96m). §DHS 101.03(96m) defines medical necessity in the following pertinent provisions:

"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; ...
  3. Is appropriate with regard to generally accepted standards of medical practice; ...
  6. Is not duplicative with respect to other services being provided to the recipient; ...
  8. ...[I]s 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.

The DHCAA interprets the code provisions to mean that a person must continue to improve for therapy to continue, specifically to increase the ability to do activities of daily living. In addition, at some point the therapy program should be carried over to the home, without the need for professional intervention.

The provider also requested Code 92526, Treatment of Swallowing Dysfunction and/or Oral Motor Function for Feeding. The DHCAA's Therapy Handbook, Appendix 10, requires the following for approval:

The recipient must have an identified physiological swallowing and/or feeding problem. This is to be documented using professional standards of practice such as identifying oral phase, esophageal phase or pharyngeal phase dysphagia, baseline of current swallowing and feeding skills not limited to signs of aspiration, an oral mechanism exam, report of how nutrition is met, current diet restrictions, compensation strategies used, and level of assistance needed.

In this case there is no known physiological swallowing/feeding problem; petitioner's oral motor structures are adequate.

After reviewing the Department's reasoning and the information provided by petitioner's mother and the therapist, I conclude that the denial was correct. I see little or no improvement. The general idea of therapy is to work on a problem and then carry over that work to the home. It is not meant to be a long-term service, but petitioner had no change in his status over a year's period in 2012, after over eight years of therapy. I was struck in particular by the difficulty the therapist had in answering my question about how petitioner had improved. Furthermore, I am concerned with his mother's statements that since ST was stopped this summer petitioner has regressed. After years of therapy petitioner started regressing almost immediately after the services ended. That alone does not bode well for the success of continued therapy.

The Administrative Code calls for denial of continuing services if the person's abilities are functional for his present way of life. Wis. Admin. Code, §DHS 107.18(3)(e)4. It appears that at least in the last year petitioner plateaued in his speech skills.

In addition petitioner receives ST in school. I noted no coordination between the private and school therapists in the PA request.

Finally, Department policy does not cover ST for eating problems when there are no physiological impairments. That alone is a basis for denying that part of the therapy.

### **CONCLUSIONS OF LAW**

The DHCAA correctly denied ST because petitioner did not shown improvement in the prior year.

**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).

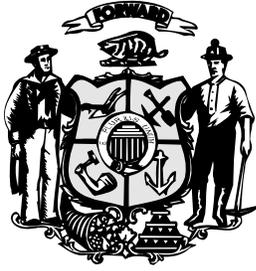
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson 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 22nd day of August, 2013

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\sBrian C. Schneider  
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 22, 2013.

Division of Health Care Access And Accountability