



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
c/o [Redacted]

DECISION

MPA/150142

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 occupational therapy (OT), 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 the requested services are shown to be medically necessary.

PARTIES IN INTEREST:

Petitioner:

[Redacted]
c/o [Redacted]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Written submission of Mary Chucka, OT 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 [Redacted] requested authorization for twice weekly OT for six months, PA no. [Redacted]. By a letter dated June 7, 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.

4. Petitioner has been receiving OT since 2003. Reports done since 2010 show little or no change in petitioner's abilities, and the evaluations contain little or no objective measurements of petitioner's abilities.
5. Petitioner receives OT in school.

### DISCUSSION

OT is covered by MA under Wis. Admin. Code, §DHS 107.17. Generally OT is covered without need for prior authorization for 35 treatment days, per spell of illness. Wis. Admin. Code, §DHS 107.17(2)(b). After that, prior authorization for additional treatment is necessary. If prior authorization 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.

Ms. Chucka, the Department's OT consultant, noted that although the evaluation showed problems to be worked on, it did not identify why petitioner was unable to accomplish the tasks. After reviewing the evidence, I have to agree with the DHCAA.

The DHCAA's major concern is that the OT evaluations show little objective evidence of petitioner's specific impairments. Ms. Chucka objected to the use of generalities such as "delayed developmental milestones," "sensory processing and modulation difficulties," and "hypotonia and joint laxity" as problems to be addressed. Such descriptive phrases do not provide objective evidence of petitioner's abilities. I agree. It is unclear where petitioner's baseline is, and how the activities will improve the deficits.

The result is that it is almost impossible to tell if petitioner is improving due to skilled OT. That he continues to receive services after ten years makes it difficult to see if he is improving or even difficult to see if the OT services have any beneficial effect at all. I was struck by the therapist's difficulty in answering

my question concerning how petitioner has improved; her response was essentially that it is hard to put the answer into words. The problem is that MA coverage of such services necessitates that the client's abilities be put into words that can be measured objectively.

To be honest, most puzzling to me is not that this request was denied, but that so many requests have been authorized in the past. In addition, petitioner receives OT in school and I found no evidence of coordination between the school and private therapists, and thus I doubt that any coordination existed in the past.

I conclude that the denial of the PA request was appropriate.

### **CONCLUSIONS OF LAW**

The DHCAA correctly denied the request for OT services because it is impossible to ascertain whether services over the past years have helped petitioner improve his functional abilities.

**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**

Wayne J. Wiedenhoef, Acting Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on August 22, 2013.

Division of Health Care Access And Accountability