



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

In the Matter of

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

DECISION

MPA/150759

PRELIMINARY RECITALS

Pursuant to a petition filed July 16, 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 August 28, 2013, at Wisconsin Rapids, Wisconsin.

During that hearing, petitioner’s representative requested that the record be held open for documents to be submitted to the Division of Hearings and Appeals (DHA), 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. ██████. This Administrative Law Judge (ALJ) sent an October 2, 2013 letter to Ms. Chucka at the Office of the Inspector General (OIG) with a packet of documents which were received at DHA on September 25, 2013. In that letter, this ALJ requested that OIG review the enclosed copies of letters/documents, and submit a reconsideration summary to me at the Division of Hearings and Appeals by October 16, 2013 with a copy of that reconsideration summary letter to be also sent to the petitioner’s representative. The petitioner’s representative was granted until October 26, 2013 to submit any response to Ms. Chucka’s reconsideration summary to DHA and OIG.

OIG’s consultant, Ms. Chucka, timely submitted her reconsideration to DHA on October 9, 2013 and to petitioner’s representative. However, petitioner’s representative did not submit any response to that reconsideration to DHA by October 26, 2013 or even by the date of this decision.

The issue for determination is whether the Department correctly denied the petitioner’s prior authorization (PA) request for twice weekly private occupational therapy (OT) services for the petitioner.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Representative:

██████ ██████, mother
████████████████████
████████████████████

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Mary Chucka, occupational therapy consultant
Office of the Inspector General (OIG)
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 6 year old resident of Wood County who resides with his mother, [REDACTED] [REDACTED], in a private residence. The petitioner receives MA benefits.
2. The petitioner is diagnosed with developmental delay. He has some medical problems with his fine motor skills and sensory issues. See Exhibits 1 and 2.
3. The Office of the Inspector General (OIG) (f/k/a DHCAA) approved five prior PA requests by petitioner for occupational therapy (OT) services during the period of November 10, 2011 through May 19, 2013.
4. During the 2011-2012 year, petitioner attended kindergarten in the [REDACTED] [REDACTED] during which he received school occupational and speech therapies.
5. On or about April 23, 2013, petitioner's provider, [REDACTED], LLC, made a prior authorization request (PA # [REDACTED]) on behalf of the petitioner for Occupational Therapy (OT) services at a frequency of twice per week for 26 weeks with a requested start date of May 20, 2013, with total requested charges of \$5,700. See Exhibit 2.
6. The petitioner completed his school Individualized Educational Plan (IEP) during April, 2013. In the May 3, 2013 IEP Report, it concluded in pertinent part: "[REDACTED] is being dismissed from Occupational Therapy at school as he has met all Occupational Therapy goals and is doing very well in the classroom. His teacher indicated that he has beautiful hand-writing. Socially [REDACTED] is doing well. He plays with lots of different friends, has conversations with his friends and is able to solve problems without coming to the teacher. [REDACTED]'s adaptive skills are average compared to his peers." However, petitioner has continued to receive speech therapy through the School District.
7. On or about June 20, 2013, the Office of the Inspector General (OIG) sent a notice to the petitioner denying the prior authorization request because the PA request did not include documentation to establish the medical necessity for continued OT services based upon the requirements of the Wisconsin Medicaid Forward Health program.
8. OIG provided the following reasons for the denial of OT services for the petitioner: a) the PA request did not establish with sufficient justification that the expertise of a skilled occupational therapist was medically necessary for the petitioner; b) the clinical record of objectively measured changes in the petitioner's functional skills as well as the problems being targeted by the requesting provider over the past several years is not sufficient to conclude that on-going direct OT services are justified or medically necessary; c) OIG finds that even the plans of care do not

offer objective evidence that the OT services provided have been instrumental in sustained changes in the petitioner's functional abilities or the problems treated; d) the record in this case offers minimal objective data to conclude effectiveness of the OT services provided for petitioner over the past few years; e) the progress notes over the past few years do not provide clear evidence that the petitioner has been able to demonstrate an increased functional status in his daily routine; f) the OT services provided over the past few years have not been established as effective in changing the petitioner's ability to complete activities of daily living or that problems treated have been eliminated or reduced with a sustained change over time; and g) the provider has not established that the requested OT services are both cost-effective and appropriate for the petitioner. See Exhibit 1.

9. In her October 9, 2013 reconsideration summary, OIG consultant, Mary Chucka, provided the following reasons for OIG's continued denial of the requested continued OT services for the petitioner: a) the School District discontinued the petitioner's school OT services as explained in Finding of Fact #6 above; b) if the occupational therapist in the school has discontinued services because it is felt that the petitioner is completing adaptive skills at a level similar to his peers, the requesting provider has the responsibility to submit a PA request that justifies the requested private OT services outside the school setting; and c) the PA request did not provide reliable, objective, evidence to justify OT services outside the school and did not establish the medical necessity of continued OT services for the petitioner at this time. See above Preliminary Recitals.
10. The petitioner's representative did not submit any response to OIG's reconsideration to DHA. See above Preliminary Recitals.

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 primarily because the past few years of private OT services did not show the continued medical need for 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 - # 10 above. At the request of petitioner's mother, 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. Petitioner's mother did submit new evidence to DHA, and that evidence was

reviewed by OIG resulting in its October 9, 2013 reconsideration summary. However, petitioner did not submit any response to that reconsideration to DHA by October 26, 2013 or even by the date of this decision. See above Preliminary Recitals.

The burden of proof was upon the petitioner and his provider to establish the medical necessity of the requested continued OT services. The petitioner and his provider have not met that burden. Therefore, OIG correctly asserted that the petitioner and his provider have not established the medical necessity of the requested continued OT services. Accordingly, OIG correctly denied the petitioner's April, 2013 prior authorization (PA) request for private occupational therapy (OT) services for the petitioner.

CONCLUSIONS OF LAW

The Office of the Inspector General (OIG) correctly denied the petitioner's April, 2013 prior authorization request for private occupational therapy (OT) services because the petitioner failed to establish the medical necessity of those requested continued OT 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, Room 651, 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 12th day of December, 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 December 12, 2013.

Division of Health Care Access And Accountability