



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION

MPA/150954

PRELIMINARY RECITALS

Pursuant to a petition filed July 29, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Department of Health Services' Office of the Inspector General to deny occupational therapy services, a hearing was held on September 11, 2013, at Racine, Wisconsin.

The issue for determination is whether Petitioner's provider has submitted evidence sufficient to demonstrate that a prior authorization request for an occupational therapy (OT) evaluation and various OT therapies meets the criteria necessary for payment by the Wisconsin Medical Assistance Program.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Respondent:

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

By: Mary Chucka, OTR
Office of the Inspector General (OIG)
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Racine County.

2. A prior authorization request (PA) seeking Medicaid payment for an occupational therapy evaluation and 13 sessions of occupational therapy (OT) at a frequency of once per week was filed on behalf of Petitioner by his provider Medical Support Services, Inc. on or about June 17, 2013. The therapy was to start June 7, 2013 and was noted on the PA to cost \$4114.20. The goals were noted to be improved upper extremity strength and dexterity for cutting food during meals, improved bilateral coordination and fine motor skills for shoe tying and improved fine motor precision skills for aligning snaps and buttons.
3. Petitioner is 9 years of age (DOB 09/13/04). His diagnosis includes Down Syndrome. He has strength and coordination deficits. He does receive OT through the school system but there was no school for the summer of 2013.
4. The Department denied this PA contending that the evidence does not show that requested OT has been demonstrated to be medically necessary nor that prior OT has produced measurable results.

DISCUSSION

The Division of Health Care Access and Accountability may only reimburse providers for medically necessary and appropriate health care services and equipment listed in Wis. Stat. §§ 49.46(2) and 49.47(6)(a), as implemented by Wis. Admin. Code, Ch. DHS 107. Some services and equipment require submission and approval of a written prior authorization request by the provider. Some services and equipment are never covered. 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.

When determining whether to approve any prior authorization, the Division of Health Care Access and Accountability (DHCAA) must consider the generic prior authorization review criteria listed at *Wis. Admin. Code, § DHS 107.02(3)(e)*. Those criteria are:

- (e) *Departmental review criteria*. In determining whether to approve or disapprove a request for prior authorization, the department shall consider:
1. The medical necessity of the service;
 2. The appropriateness of the service;
 3. The cost of the service;
 4. The frequency of furnishing the service;
 5. The quality and timeliness of the service;
 6. The extent to which less expensive alternative services are available;
 7. The effective and appropriate use of available services;
 8. The misutilization practices of providers and recipients;
 9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including medicare, or private insurance guidelines;
 10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
 11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
 12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.

The Wisconsin Administrative Code does define the term ‘medical necessity’. It is a service that:

“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.

Wis. Admin. Code, § DHS 101.03(96m).

As with most public assistance benefits the initial burden of demonstrating eligibility for any particular benefit or program at the operational stage falls on the applicant, *Gonwa v. Department of Health and Family Services*, 2003 WI App 152, 265 Wis.2d 913, 668 N.W.2d 122 (Ct.App.2003). In other words, it is a petitioner’s burden to demonstrate that s/he qualified for the requested continued services by a preponderance of the evidence. It is not the Department’s burden to prove that s/he is not eligible. Further, I note that Medicaid is meant to provide the most basic and necessary health care services at a reasonable cost to a large number of persons and must authorize services according to the Wisconsin Administrative Code definition of medical necessity and other review criteria noted above. It is not enough to demonstrate a benefit; rather, all of the tests cited above must be met, i.e., it is necessary to document exactly why skilled intervention is medically necessary.

The Department submitted a lengthy letter detailing the reason for its denial and Petitioner’s provider submitted a similarly detailed response. I am not reproducing those arguments here. In brief the Department maintains that there is a lack of documentation to show that past OT has been effective or that the skills of a professional occupational therapist were needed for this PA. *See Exhibit # 3, July 25, 20//12 letter from the Office of the Inspector General of the Department of Health Services, by Mary Chucka, OTR.* The provider opines that Petitioner has good rehabilitation potential and that he has had private therapy during all school breaks to prevent regression. *See Exhibit # 4, September 9, 2013 letter from Medical Support Services, by Claire Rosen, MS, OTR/L.*

I am concluding that the denial of the PA request was appropriate. Ultimately, the Department’s letter presents the more persuasive arguments. I am struck by the fact that the current PA focuses on strength and coordination. These are improved via repetition at home and in daily life. They do not require the skills of an occupational therapist rather these attributes are improved via daily activities, repetition and practice. For example, using a clothes pin to increase finger strength so as to close a clothing snap was something worked on in the summer of 2012 and again 2013. It is not at apparent why the skills of an OT are necessary to work on this in 2013. It is should be part of a virtually daily routine. Similarly, cutting food with a fork was a goal as far back as the 2009 plan of care and Petitioner was noted to have met this goal as of January 2011. As it is back as a goal in 2013, Petitioner either is not getting enough practice or

is not able to carry the skill forward. Finally, I note that the provider makes reference to prior Division of Hearings and Appeals decisions. They are not precedential and I have not relied on them here.

In conclusion, I also note that a provider may not charge a recipient for services if a PA is denied unless that recipient has been advised of this before receiving the service. *Wis. Admin. Code, § DHS 106.04(3)(a)*.

NOTE: Petitioner's provider will not receive a copy of this Decision form the Division of Hearings and Appeals but Petitioner's parents are free to share it if they so desire.

CONCLUSIONS OF LAW

That Petitioner's provider has not submitted evidence sufficient to demonstrate that a prior authorization request for occupational therapy (OT) meets the criteria necessary for payment by the Wisconsin Medicaid Program.

THEREFORE, it is

ORDERED

That this 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 Milwaukee,
Wisconsin, this 11th day of November, 2013

\sDavid D. Fleming
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 November 11, 2013.

Division of Health Care Access And Accountability