



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

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In the Matter of

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██████████████████████████████

DECISION

MPA/151070

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 30, 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 August 27, 2013, at Barron, Wisconsin.

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

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

██████ ██████  
██████████████████  
████████████████████  
██████████████████████████████

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 Washburn County.

2. On May 21, 2013, the petitioner with Nature's Edge requested occupational therapy three times a week for 13 weeks followed by two times a week for another 13 weeks at a cost of \$8,015. After further submissions, the Office of Inspector General denied the request on June 24, 2013.
3. The petitioner is a six-year-old boy diagnosed with autism.
4. The petitioner likes and eats pizza, mac and cheese, baked beans, chicken, peanut butter, apple butter, toast, chili, tacos, and chips.
5. Nature's Edge set the following goals for the petitioner:
  - a. Promote independence with his activities of daily living by putting on and taking off his shirt and socks, taking off his shoes, zipping a winter coat, snapping and unsnapping six snaps on a shirt he is wearing, washing his body during bathing, and using a spoon and fork properly.
  - b. Increase nutritional intake by eating three new proteins and two new carbohydrates.  
(These goals are paraphrased to save space.)
6. Nature's Edge did not specify the cause of the petitioner's inability to perform activities of daily living or indicate exactly how it will treat those deficits.
7. The petitioner has an individualized education plan, but this had not yet been prepared at the time of the hearing.

### **DISCUSSION**

Medical assistance covers occupational therapy if the recipient obtains prior authorization after the first 35 visits. Wis. Admin. 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.

One problem, which is not the fault of the provider or the petitioner's representatives is that at the time of the hearing, the school district had not yet completed the petitioner's IEP. One cannot assume that it will be the same as last year because he has moved to a new school district. Without an IEP, there is no way to determine whether the requested therapy duplicates therapy he already receives. Nevertheless, because this is not the petitioner's fault, I will not deny the request on this basis.

The petitioner is a six-year-old boy diagnosed with autism. He has difficulties performing his activities of daily living such as dressing and washing himself and using eating utensils. Although Nature's Edge's plan seeks to treat these problems, it does not indicate what the specific cause of the problem is. It is unclear whether Nature's Edge views these problems as tied to his behavior or to lack of coordination, or some combination of both. This is important because the cause of the problem determines the course of the therapy. For example, if a quarterback throws too many interceptions, it may be because he lacks the arm strength to get the ball to the receiver before the defensive back gets there, or it may be because he makes poor decisions under pressure. Training to correct these problems depends upon their cause. If he lacks arm strength, the training should concentrate on improving that strength. If he constantly makes the wrong decisions, some training that improves his mental acuity in this area should be used. In the petitioner's case, because the request never indicates what specifically is causing his poor skills and what specifically is being done to improve those skills, there is no way for either the Office of Inspector General or the Division of Hearings and Appeals to objectively judge whether the therapy will be helpful. And one cannot assume that the therapy will help the petitioner because he has been receiving therapy for the same problems for several years and has shown little improvement. The petitioner and his provider have the burden of proving by the preponderance of the credible evidence that the requested therapy is medically necessary. Without more information concerning the specific causes of the petitioner's poor skills performing activities of daily living and what is being done to improve those skills, he has not met that burden. Therefore, I must uphold the Office of Inspector General's decision denying therapy.

### **CONCLUSIONS OF LAW**

The petitioner has not proven that the requested therapy is 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 4th day of October, 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 October 4, 2013.

Division of Health Care Access And Accountability