FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]
c/o [redacted] & [redacted]
[redacted]
[redacted]

DECISION

MPA/151280

PRELIMINARY RECITALS

Pursuant to a petition filed August 07, 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 September 18, 2013, at Barron, Wisconsin.

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

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]
c/o [redacted] & [redacted]
[redacted]
[redacted]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Pamela Hoffman
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 Barron County.

2. The petitioner with ’s requested 26 weekly physical therapy sessions at a cost of $5,074 on April 30, 2013. The Office of Inspector General requested and ’s submitted additional information four times before the Office modified the request by approving six sessions on July 1, 2013.

3. The petitioner is an eight-year-old boy diagnosed with Prader-Willi syndrome, which is caused by a genetic disorder and results in a number of physical, mental and behavioral problems. Those with the disease have a constant sense of hunger and low muscle mass, which often leads to obesity. http://www.mayoclinic.com/health/prader-willi-syndrome/DS00922

4. The petitioner often seems unaware of his surroundings and runs into things.

5. ’s set the following goals for the petitioner:

   a. [He] will be able to statically track a moving object across midline in 6 months time to be able to perceive what is around him at home and school.

   b. [He] will be able to increase his core strength by one grade to 2/5 doing 5 sit ups and hip strength by one grade to be able to stabilize his weight over one leg for 20 sec to increase his stability with going down a curb step in 6 months time.

   c. [He] will be able to increase his vestibular reliance and combine with visual tracking to allow him to walk around cones and pillars in his path in 6 months time.

   d. [He] will be able to have increased reciprocal patterning with upper and lower extremities and have increased engagement at his core during these activities to be able to run up and down a hill with good control in 6 months time.

   e. [He] will be able to have increased reciprocal patterning with upper and lower extremities and have increased engagement at his core during these activities to be able to run up and down a hill with good control in 6 months time.

6. The petitioner is in regular physical education classes, but his school does not offer modified classes. He does not receive physical therapy through his school district.

DISCUSSION

The petitioner with ’s , requested 26 weekly sessions of physical therapy. The Office of Inspector General approved six sessions. Medical assistance covers physical therapy if the recipient obtains prior authorization after the first 35 visits. Wis. Admin. Code § HFS 107.16(2)(b). When determining whether to approve therapy, the Division must consider the generic prior authorization review criteria listed at Wis. Admin. Code § HFS 107.02(3)(e). They include:

1. The medical necessity of the service…
3. The cost of the service…
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;

Medically necessary” means a medical assistance service under ch. HFS 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.

The petitioner is an eight-year-old boy diagnosed with Prader-Willi syndrome, which is caused by a genetic disorder and results in a number of physical, mental and behavioral problems. Those with the disease have a constant sense of hunger and low muscle mass, which often leads to obesity. The request contends that the petitioner has poor core strength and runs into things because of poor visual tracking ability. It set the following goals for him:

1. [He] will be able to statically track a moving object across midline in 6 months time to be able to perceive what is around him at home and school.
2. [He] will be able to increase his core strength by one grade to 2/5 doing 5 sit ups and hip strength by one grade to be able to stabilize his weight over one leg for 20 sec to increase his stability with going down a curb step in 6 months time.
3. [He] will be able to increase his vestibular reliance and combine with visual tracking to allow him to walk around cones and pillars in his path in 6 months time.
4. [He] will be able to have increased reciprocal patterning with upper and lower extremities and have increased engagement at his core during these activities to be able to run up and down a hill with good control in 6 months time.
5. [He] will be able to have increased reciprocal patterning with upper and lower extremities and have increased engagement at his core during these activities to be able to run up and down a hill with good control in 6 months time.

The petitioner undoubtedly has physical problems. But [redacted]'s [redacted] never measures any deficits or explains what specifically causes them. Medical assistance covers basic medical services. If the provider does not explain in some detail what the person's problems are, it is impossible to determine if the service is for a basic service. When medical assistance funds a physical therapist, it is paying someone to identify a physical flaw, break that flaw down into the specific components causing the problem, and develop a plan to address those specific components. For example, if a baseball player cannot get batters out, the cause could be any number of things, including lack of strength, poor coordination, or an injury to some muscle used when throwing. When addressing the problem, it would not be enough to have the pitcher just practice throwing—unless the cause of the problem is lack of repetitions. If the problem is merely lack of repetitions, there is no need for someone with special training to help the pitcher.

[redacted]'s [redacted] assumes that the petitioner runs into things because of his poor tracking skills, but it offers no proof of this other than anecdotal evidence. It does not consider any alternative causes of his failure to avoid objects. Nor does it indicate how often he runs into things and what the circumstances are. Finally, it does not indicate what constitutes normal tracking skills and how the petitioner falls short.

As for the improving the petitioner's core strength, it never explains why a therapist is even needed. [redacted]'s [redacted]'s therapist wrote to the Office of Inspector General on May 31, 2013, "[I]f his parents could simply put him on a piece of exercise equipment to treat his impairments, we would not need our field of expertise at all. Why are we as physical therapists being trained at this level if it is so simple to

have parent 'safely and effectively deliver the therapeutic procedure.' They do not have the "unique knowledge, training, and expertise. [Petitioner's] parents are not physical therapists are not trained in these skills." This argument misses the point. No one questions that in some situations the skills of a physical therapist are needed. But it is also true that a high percentage of strengthening exercises are fairly simple and, with little or no training, can be performed by most people. I have been a lawyer for 29 years and have received training that makes me more qualified to interpret the law than a lay person. But in those 29 years no one has ever needed to ask me to interpret the state statute that requires one to stop for a red light. [redacted]'s [redacted] has presented no evidence about what specific exercises are used in its program, so there is no evidence that these are so complicated that they could not be performed with the guidance of a lay person.

Related to this, the petitioner's mother testified that she cannot guide him through a home exercise program, explaining, "I am not a therapist. I'm not even a fit person." Neither her lack of physical therapy certification nor her fitness is relevant when it comes to helping her son perform basic exercises. Moreover, the therapy was requested for only one session a week. Any exercise needs to be done more often than this to do any good. This means that the petitioner's mother or someone other than the therapist must help the petitioner perform the program any other time it is done. The Office of Inspector General has approved six sessions to develop, monitor, and modify the program. Because [redacted]'s [redacted] has not presented any evidence that its program is complicated, it has not presented sufficient evidence to prove that more than six sessions are needed to ensure that it is performed correctly. Based upon this, I find the Office's decision reasonable and uphold it.

CONCLUSIONS OF LAW

The petitioner does not require more than six sessions of physical therapy to meet his medically necessary needs.

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 15th day of October, 2013

\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 15, 2013.

Division of Health Care Access And Accountability