



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/151872

PRELIMINARY RECITALS

Pursuant to a petition filed September 3, 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 November 19, 2013, at Eau Claire, Wisconsin. A hearing scheduled for October 22, 2013, was rescheduled at the petitioner's request.

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:

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
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 (CARES # [REDACTED]) is a resident of Eau Claire County.

2. The petitioner and ██████████ requested six months of occupational therapy on July 5, 2013. The Office of Inspector General denied the request on July 22, 2013
3. The petitioner's primary diagnoses are dyspraxia and autism. He receives speech therapy for his dyspraxia.
4. ██████████'s primary occupational therapy goals for the petitioner are to promote his independence in his activities of daily living and to improve his self-identity skills. The activities of daily living include putting on his shoes and socks, tying his shoes, zipping his winter jacket, unfastening buttons, washing his hands properly, improving the grasp he uses on his eating utensils, and sitting through a meal for 10 minutes. The self-identity skills include stating his full name, his parents' names, and his telephone number.
5. ██████████ seeks to accomplish the goals set up for the petitioner primarily by using sensory integration techniques such as weighted vests.
6. The petitioner receives occupational therapy through his school district. That therapy seeks to help him improve his ability to perform his activities of daily living and control his behavior sufficiently to attend to being independent in self-cares such as performing "dressing tasks" while at his locker or in the bathroom, opening packages at lunch, using utensils, and cleaning up after eating.

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, whether the service is medically necessary and an effective and appropriate use of available services. Wis. Admin. Code, § DHS 107.02(3)(e)1 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.

...
Wis. Admin. Code, § DHS 101.03(96m)

The petitioner is a seven-year-old adopted boy who has been given a number of confirmed and unconfirmed diagnoses. He has had an ADD diagnosis, but the latest medical reports included with his prior authorization request indicate that there is not enough evidence to confirm this. His mother indicates

that his primary and most recent diagnoses are autism and dyspraxia. The medical records support her contention. Dyspraxia involves speech and is being treated with speech therapy. This means that the primary relevant diagnosis for this matter is autism, or a pervasive development disorder.

█ seeks to promote the petitioner's independence in his activities of daily living and to improve his self-identity skills. The activities of daily living include putting on his shoes and socks, tying his shoes, zipping his winter jacket, unfastening buttons, washing his hands properly, improving the grasp he uses on his eating utensils, and sitting through a meal for 10 minutes. The self-identity skills include stating his full name, his parents' names, and his telephone number. Although the request and the petitioner's parents identified these problems, and there are a number of goals related to improving his ability to perform in these areas, the evidence concerning how significant these problems are, what combination of physical and mental deficits causes them, and how they should be treated was confusing. The petitioner's mother testified that he is "like a raccoon on cocaine," indicating that he does not slow down and organize his thoughts well enough to perform the various tasks. There was also some evidence that his physical skills lagged behind most children his age, but these deficits were diagnosed primarily through questions █'s therapist asked of the petitioner's parents rather than by her objectively testing him. █'s request indicates that it will treat the petitioner with a combination of therapeutic exercises, neuromuscular reeducation, therapeutic activities, and self-care management training.

The Office of Inspector General asked the provider several questions in an attempt to clarify the specific causes of the petitioner's problems. The therapist indicated that there was "no single problem that results in [his] inability to complete a task requested of him." She continued: "For this reason, I believe the request of the OIG to answer the 7-10 additional questions to provide further information on each problem statement is both inefficient and unnecessary in order to identify [his] needs and develop an appropriate plan of care." *Letter to whom it may concern from Carla A. Johnson*, November 7, 2013, p. 2.

I disagree. 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 velocity to get the ball to the receiver before the defensive back gets there, it may be because he lacks accuracy, or it may be because he makes poor decisions under pressure. Training to correct these problems depends upon their cause. Lack of velocity can be caused by an inadequate range of motion or inadequate arm strength. Poor accuracy can be caused by poor mechanics such as bad footwork or trunk rotation, or it can be caused by a lack of basic coordination. Different drills can correct each of these physical problems. Other drills may increase his mental acuity under stress. While a combination of flaws generally causes the problem, this does not mean that some preset program with a little of this and a little of that should be used for everyone. The mix of deficits varies with everyone, and any program should be tailored to a player's particular needs. If █ has tailored its therapy to the petitioner's specific needs, it has provided no evidence of this in its prior authorization.

What evidence there was of the specific methods █ used to treat the petitioner's deficits came from his parents' testimony; both are actively involved in his therapy. They testified that Natures' Edge used various techniques such as weighted vests to help him self-regulate. These are sensory integration techniques. Medical assistance covers sensory integration as part of occupational therapy, but Wis. Admin. Code, § 107.02(2)(b) allows the Department to bar payment for "medically unnecessary" and "inappropriate" services. Using this authority, it held in *Final Decision No. MPA-65/111878*, which involved █, that it cannot cover sensory techniques to treat those with autism. The Department's final decisions are binding on administrative law judges, meaning that they must follow those decisions.

In addition to using a technique the Department has found unsuitable to treat those with autism, █'s proposed therapy covers similar ground to that covered by therapy the petitioner receives in

school. His school therapy seeks to help him improve his ability to perform his activities of daily living and control his behavior sufficiently to independently perform self-cares such “dressing tasks” while at his locker or in the bathroom, opening packages at lunch, using utensils, and cleaning up after eating. The Department has ruled on when therapy from one provider duplicates that from another. Deputy Secretary Susan Reinardy held in *DHA Final Decision No. MPA-37/80183*, a speech therapy appeal, that “the deciding factor in whether services are duplicative is not the [therapy] technique utilized by the therapists, but the goals and outcomes being addressed by the therapists.” *Id.* at 2. It does not matter, for example, if one provider addresses group activities with peers and the other one-on-one activities with an adult. A requested service duplicates “an existing service if the intended outcome of the two services is substantially the same.” *Id.* at 3. Her decision specifically rejected additional therapy because the recipient “‘needs’ more intense services than the school provides.” The holding rests on the principle that “Medicaid may not pay for two services if both services have the same intended outcome or result with respect to the medical condition the services are intended to address.” *Id.* at 4. The deputy secretary has made it clear that the “intended outcome” test must be read broadly. In *DHA Final Decision No MPA-49/82886*, a decision reiterating the principle laid down in *MPA-37/80183*, she pointed out that the intended outcome was the same if both therapists were working to develop similar functional skills. As with the decision concerning sensory integration techniques to treat autism, these decisions concerning duplication must be followed by the Division of Hearings and Appeals. The therapy proposed by [REDACTED] and the petitioner school do not have exactly the same intended outcome. But both seek to improve his ability to dress himself and use eating utensils. Under the Department’s decisions, these goals are similar enough that I must consider them to duplicate each other.

In conclusion, because [REDACTED] did not adequately assess the petitioner’s specific problems or proposed treatment, because it seeks to use sensory techniques to treat autism, and because its therapy duplicates the therapy he receives in school, I must uphold the Office of Inspector General’s denial of that therapy.

CONCLUSIONS OF LAW

The requested occupational therapy is not 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, 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 16th day of December, 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 December 16, 2013.

Division of Health Care Access And Accountability