



FH
[REDACTED]

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

In the Matter of

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

DECISION

MPA/151892

PRELIMINARY RECITALS

Pursuant to a petition filed September 04, 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 October 24, 2013, at New Richmond, Wisconsin.

The issue for determination is whether the petitioner is entitled to speech therapy provided before her provider submitted its request.

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
Madison, Wisconsin 53703

By: Theresa Walshe

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 St. Croix County.

2. On June 12, 2013, the petitioner with [REDACTED], Inc., requested speech therapy twice a week for 26 weeks beginning on May 1, 2013.
3. The Office of Inspector General initially denied the entire request but on October 30, 2013, indicated that it would pay for 52 visits from June 12, 2013, through December 31, 2013. It continues to deny payment for any service provided before the request was submitted.
4. Interactive Therapy has not provided any reason for submitting the request after the speech therapy began.

DISCUSSION

Medical assistance covers speech therapy, but recipients must obtain prior authorization after the first 35 visits. Wis. Admin. Code § DHS 107.18(2)(b). On June 12, 2013, the petitioner, together with her provider, [REDACTED], Inc., requested speech therapy twice a week for 26 weeks beginning on May 1, 2013. The Office of Inspector General initially denied the entire request. However, after the hearing, Interactive Therapy submitted additional information, and the Office of Inspector General approved 52 sessions from June 12, 2013, through December 31, 2013. It continues to deny services provided before June 12, 2013.

According to Wis. Admin. Code, § DHS 107.02(3)(c), “If prior authorization is not requested and obtained before a service requiring prior authorization is provided, reimbursement shall not be made except in extraordinary circumstances such as emergency cases where the department has given verbal authorization for a service.” This rule is not absolute. Another rule, Wis. Admin. Code, § DHS 106.03(4)(a), which is found in the chapter in the administrative code pertaining to the provider’s rights and responsibilities, allows an exception to this general rule “[w]here the provider’s initial request for prior authorization was denied and the denial was either rescinded in writing by the department or overruled by an administrative or judicial order.”

The second rule pertains primarily to therapy provided while a petitioner is appealing a denial. I do not read it as allowing reimbursement for therapy provided before the request was submitted, unless it falls under one of the exceptions found in Wis. Admin. Code, § DHS 107.02(3)(c). The rule is meant to address those situations where the recipient and therapist believe that the recipient is best served by immediate therapy; it is not meant to allow the provider a means to avoid the consequences of its negligence in submitting the request. The petitioner’s speech therapist appeared at the hearing and did not know why the request was late. Under these circumstances, I must uphold the agency’s denial of therapy provided before June 12. Because the Office of Inspector General has approved more therapy than the petitioner requests to receive after June 12, there is no other issue to determine, and the appeal is denied.

CONCLUSIONS OF LAW

The petitioner’s provider is not entitled to reimbursement for therapy provided before it submitted its prior authorization request.

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 31st 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 31, 2013.

Division of Health Care Access And Accountability