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

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In the Matter of

██████  
c/o ██████  
██████  
██████

DECISION

MPA/152000

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 10, 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 medical assistance reimbursement for physical therapy.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

██████  
c/o ██████  
██████  
██████

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 ██████ County.

2. On May 15, 2013, the petitioner with [REDACTED], Inc., (formerly Special Children Center) requested 26 weekly one-hour physical therapy sessions at a cost of \$3,639.
3. The petitioner is a four-year-old girl diagnosed with Rett Syndrome.
4. The petitioner receives 30 minutes of physical therapy twice a week through her school district. The district is working on “protective reactions in sitting and standing for the independence and decreased falling goals, and core strength for the prolonged sitting goal.” It also does “lateral trunk stretches and prone with weight bearing through upper extremities at parent request, and to work on her goals.” It set the following goals for her:
  - a. Increased independence in the classroom and on playground
  - b. Decreased falling episodes
  - c. Being able to stay seated in order to attend to classroom activities.
5. [REDACTED] indicates that the main impediments to the petitioner’s ability to function are lack of lower extremity strength and poor core stability.
6. [REDACTED]’s primary goal is for the petitioner to “demonstrate increased stability/mobility for functional gross motor skill.” It set the following subgoals:
  - a. [She] will consistently walk up/down the steps with railing assist only and alternating feet. ([REDACTED] indicates that she currently “[p]refers to walk with use of railing and 1 hand held. Inconsistently alternates feet.”)
  - b. [She] will develop adequate stability to stand in 1 place for 5 seconds. ([REDACTED] indicates that she “[t]ends to always be on the ‘move.’”)
  - c. [She] will develop adequate stability to side sit to the left or right. ([REDACTED] indicates that “[t]hese positions are difficult for her.”)
  - d. [She] will rise from the floor using a half kneel position without pushing up from the floor with her hands. ([REDACTED] indicates that she “[t]ends to move through half kneel on an inconsistent basis with hand usage.”)
7. [REDACTED]’s plan of care for each of its goals consists of the following:
  - a. Therapeutic exercises to develop strength, endurance, range of motion and flexibility.
  - b. Neuromuscular re-education of movement, balance, coordination, kinesthetic sense, posture and proprioception
  - c. Aquatic therapy with therapeutic exercises
8. [REDACTED] submitted no comprehensive evaluation with its request.

### DISCUSSION

Medical assistance covers physical therapy if the recipient obtains prior authorization after the first 35 visits. Wis. Admin. Code, § DHS 107.16(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.

The petitioner is a 4-year-old girl diagnosed with Rett Syndrome. She seeks 26 weekly physical therapy sessions from the █. █ Center. The Office of Inspector General denied the request because █. █ Center did not provide a comprehensive evaluation. A comprehensive evaluation is important because it systematically and objectively lists the recipient's functional deficits. Until the deficits are broken down, it is not possible to develop a plan specifically tailored to that recipient. █. █ Center later submitted a large stack of documents to the Office, but it never performed and submitted a comprehensive evaluation.

█. █'s plan also is similar to that put in place by her school district. The question is whether the plans duplicate each other. 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.

█. █'s primary goal is for the petitioner to "demonstrate increased stability/mobility for functional gross motor skill." It set the following subgoals:

1. [She] will consistently walk up/down the steps with railing assist only and alternating feet. (█. █ indicates that she currently
2. [She] will develop adequate stability to stand in 1 place for 5 seconds.
3. [She] will develop adequate stability to side sit to the left or right.
4. [She] will rise from the floor using a half kneel position without pushing up from the floor with her hands.

The petitioner receives 30 minutes of physical therapy twice a week through her school district. Although its goals are not exactly the same as █. █'s, both concentrate on improving her ability to move about,

stand, and maintain a stable sitting position. The school therapist noted that she is working on “protective reactions in sitting and standing for the independence and decreased falling goals, and core strength for the prolonged sitting goal.” She added that “[w]e also do lateral trunk stretches and prone with weight bearing through upper extremities at parent request, and to work on her goals.” The school district set the following goals for her: :

- a. Increased independence in the classroom and on playground
- b. Decreased falling episodes
- c. Being able to stay seated in order to attend to classroom activities.

The goals of the ■■■■■ Center and the school district are sufficiently similar to find that they duplicate each other. It is up to the petitioner and her provider to show by the preponderance of the credible evidence that therapy should be approved. Because ■■■■■ Center has not done a comprehensive evaluation that objectively lays out the petitioner’s specific functional limitations, and because the center’s goals duplicate those of the petitioner’s school, she is not entitled to the requested therapy.

### CONCLUSIONS OF LAW

The petitioner and her provider have not shown by the preponderance of the credible evidence 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 15th day of November, 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 November 15, 2013.

Division of Health Care Access And Accountability