



FH  
[REDACTED]

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

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In the Matter of

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

DECISION

MPA/152155

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 18, 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 telephone hearing was held on October 23, 2013, at La Crosse, Wisconsin. Previously scheduled hearings for October 9, 2013 and October 22, 2013, were rescheduled at petitioner's request.

The issue for determination is whether the petitioner's prior authorization for speech therapy may be approved.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

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

Petitioner's Representative:

Attorney [REDACTED] E. [REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Theresa Walske, MS, CCC-SLP  
Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of La Crosse County.
2. On July 9, 2013, the petitioner, together with [REDACTED] [REDACTED] [REDACTED] [REDACTED], Inc., submitted Prior Authorization Request No. [REDACTED] for speech and language therapy services twice per week for 20 weeks, starting July 8, 2013 and ending November 25, 2013. The Division of Health Care Financing denied the request on August 6, 2013. The petitioner did not receive any private therapy. Exhibit 2.
3. The petitioner was born December 8, 2008. She is 5 years old. Exhibit 2.
4. The petitioner is diagnosed with Angelman Syndrome. Exhibit 2.
5. The petitioner receives speech and language therapy from her school district during the regular school year, but not during the summer.
6. The petitioner received summer speech and language therapy from May 7, 2012 – August 31, 2012, pursuant to an approved Prior Authorization request. Exhibit 3.

**DISCUSSION**

Speech and language therapy is covered by medical assistance, but recipients and their providers must obtain prior authorization after the first 35 treatment days per spell of illness. Wis. Adm. Code § DHS 107.18(2)(b). The petitioner, together with his provider, [REDACTED] [REDACTED] [REDACTED] [REDACTED], Inc., requested speech and language therapy twice per week for 20 weeks, starting July 8, 2013 and ending November 25, 2013. At the time of the request, the petitioner sought the sessions because the petitioner's school district did not provide therapy during the summer. She did not receive any private therapy during that period because she had no assurance that it would be paid for. While the prior authorization request sought coverage for treatment during the summer and the fall (when school would again be in session), at hearing petitioner's father specifically indicated that petitioner's appeal was only for therapy during the summer. Petitioner's pediatrician also submitted a letter wherein she stated, "I am requesting that the denial for therapy over the summer be appealed." Exhibit 4.

When determining whether a service is necessary, the Division must review, among other things, the medical necessity of the service. Wis. Adm. Code § DHS 107.02(3)(e)1. "Medically necessary" means a medical assistance service under ch. DHS 107 that is "[r]equired to prevent, identify or treat a recipient's illness, injury or disability;" and, among other things, is "not duplicative with respect to other services being provided to the recipient" Wis. Adm. Code § 101.03(96m)(a) and (b)6.

I note initially that the law requires me to determine if the requested services duplicate other services. If the school district is not providing these services, there are no services for the private therapy to duplicate. Standards for when private therapy duplicates other therapy were set by Deputy Secretary Susan Reinardy in *DHA Final Decision No. MPA-37/80183*, a matter which like this one involved speech therapy. She held that "the deciding factor in whether services are duplicative is not the [speech 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.

The Prior Authorization Request makes it clear that the requested therapy was meant to replace the school's therapy in the summer of 2013, and was to continue into fall when the school district would again offer therapy. Petitioner is only appealing the denial of the summer therapy. The respondent complains that a lack of objective quantification of improvement in petitioner's speech, potential duplication of services by and between petitioner's school-based provider and the private provider, and

the lack of documentation of coordination by and between these two providers condemns petitioner's request. Based on the record before me, I do not reach the same conclusion.

The issues regarding potential duplication of services by and between petitioner's school-based provider and the private provider, and the lack of documentation of coordination by and between these two providers are rendered moot, as petitioner has indicated that her appeal is limited to the summer months, when school therapy was not available.

That leaves for review the request for summer services vs. the lack of quantifiable progress to justify the therapy requested. Simply stated, the respondent has provided ample documentation of petitioner's improvement due to therapy. See, Exhibits 2 and 4. I also found persuasive petitioner's father's testimony that petitioner's Angelman's Syndrome diagnosis does not easily lend itself to testing. He noted that, while he couldn't say that the petitioner's speech regressed last summer when petitioner had no therapy, she did not improve. I find that the lack of regression supports the medical necessity of continued speech therapy services in that it demonstrates petitioner's retention of the therapy-provided skills previously provided. Additionally, petitioner's pediatrician stated:

It is necessary to provide consistent therapy without long breaks, as would be if no therapy was provided during the summer months. Individuals that are non-verbal can develop appropriate communication skills with effective therapy and consistency. The earlier an individual is introduced and maintained with speech/communication therapy, the better chances that functional communication can become a reality for individuals with Angelman Syndrome.

Exhibit 4.

Based on the record before me, I conclude that the petitioner has established the medical necessity of speech therapy for petitioner for the period of July 8, 2013, through August 30, 2013. This period constitutes 8 weeks, and petitioner sought therapy at the rate of 2 times per week. As such, I will remand this matter to the respondent to approve 16 speech therapy sessions for petitioner. The respondent's denial of therapy sessions requested for September, October, and November is not a subject of this appeal, and that denial remains undisturbed.

**I note to the Petitioner that the provider will not receive a copy of this Decision. In order to have the services approved, the Petitioner must provide a copy of this Decision to [REDACTED], Inc. The provider must then re-submit the prior authorization request along with a copy of this Decision.**

#### CONCLUSIONS OF LAW

1. The petitioner has established the medical necessity of speech therapy for petitioner for the period of July 8, 2013, through August 30, 2013.
2. The respondent's denial of speech therapy sessions requested for September, October, and November of 2013, is not a subject of this appeal, and that denial remains undisturbed.

**NOW, THEREFORE, it is ORDERED**

That this matter shall be remanded to the respondent to approve 16 speech therapy sessions for petitioner. Petitioner's provider may re-submit a PA request for 16 speech therapy sessions, and its invoice along

with a copy of this decision, to ForwardHealth for payment and ForwardHealth is directed to make payment accordingly.

### **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 19th day of December, 2013

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\sPeter McCombs  
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 19, 2013.

Division of Health Care Access And Accountability  
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