



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/152253

PRELIMINARY RECITALS

Pursuant to a petition filed September 20, 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 12, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly denied the Petitioner's Prior Authorization request for speech language therapy services.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Theresa Walske

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. She is 4 years old and lives at home.

2. On July 22, 2013, a PA request was submitted on behalf of the Petitioner for speech language therapy two times/week for 26 weeks.
3. The Petitioner's primary diagnoses are autism and Bilateral Duane's Syndrome, H/O prematurity, prolonged rupture of membranes, hyperbilirubinemia of prematurity, feeding issues, acid reflux, hypotonia and sensory processing deficit.
4. The Petitioner participates in early childhood classroom at Vision Forward Association. She also participates in Intensive In-Home Treatment services 27 hours/week through Wisconsin Applied Behavior Analysts. The Intensive In-Home Treatment Services started on April 24, 2013 with 8 hours/week and increased up to 27 hours/week on September 1, 2013.
5. The goals for speech and language therapy in the plan of care submitted with the PA request include:
 - Follow 2-step related commands with object/pictures x 5-10/session with repeat and moderate cues.
 - Point to parts of whole when named 10x/session.
 - Label object/action pictures x 10-15 session with minimal delay and cue at 75% correct speech articulation over 2 sessions.
 - Use 3 – 5+ word utterances to request needs, to complete sentences/in songs to greet and to comment x10+/session with delay and cue over 2 sessions.
 - Identify word association or object function named in a field of 2 pictures/object choices x10/session over 2 sessions.
 - Answer wh- questions x3/sessions with delay and cue and no echo of question.
6. The treatment plan for Petitioner's Intensive In-Home Treatment for the period of 3/13/2013 – 9/13/2013 identified current problem areas as "communication, social skills, safety awareness and play skills." The same problem areas were identified in the treatment plan for Intensive In-Home Treatment for the period of 9/13/2013 – 3/13/2014."

In the area of "receptive language", the treatment plan identifies in a "progress summary" that the Petitioner identifies that she is able to comply with simple one-step instructions and receptively label approximately 20 common items according to their function. It notes that she exhibits delays in following multiple step instructions and is rapidly acquiring skills to label items according to their different functions, features and classes as well as attributes that describe common items. According to the goals, she has "partially mastered" all of the goals identified in the previous treatment plan, including:

- Client will complete at least ten one-step receptive instructions consistently across three consecutive sessions and two staff members with 100% accuracy.
- Client will receptively identify at least 30 common objects when given the instruction to "give" or "touch" with 100% accuracy across three consecutive sessions and two different line staff.
- Client will receptively identify at least 30 common objects according to their feature when given the instruction to "give" or "touch" with 100% accuracy across three consecutive sessions and two different line staff.

- Client will receptively identify at least 30 common objects according to their function when given the instruction to “give” or “touch” with 100% accuracy across three consecutive sessions and two different line staff.
- Client will receptively identify at least 30 common objects according to their class when given the instruction to “give” or “touch” with 100% accuracy across three consecutive sessions and two different line staff.
- Client will receptively identify 20 different attributes of common items with 100% accuracy across three consecutive sessions and two line staff.
- Client will receptively identify letter of the alphabet (upper and lower case) with 100% accuracy across two line staff and three consecutive sessions.
- Client will receptively identify numbers 1 – 99 with 100% accuracy across two line staff and three consecutive sessions.

In the area of “safety skills”, the treatment plan notes that the Petitioner has made progress by displaying the ability to stay with line staff while staff is holding her hand and walking approximately ten feet when given the instruction to “stay by me.” It notes that Petitioner is targeting this skill in the home setting with line staff and her mother before generalization outside of the home can take place. It indicates that she has partially mastered the goal of responding to the instruction “stay by me” by walking next to an individual (without holding their hand) in the home environment for one minute across five consecutive sessions and at least two staff members and one parent.

In the area of “requests”, the treatment plan notes that the Petitioner has made progress in displaying the ability to independently mand for items with a minimum of three words and she presents manding opportunities as requests rather than in a question format. She is noted to be working on expanding carrier phrases and manding for attention in various ways that are socially appropriate. The goals note that she has partially mastered the goal of independently manding using a carrier phrase (“I want”, “Can I have”, “Give me”, etc.) at least 20 times in a one hour duration. New goals include:

- Client will request for attention via saying “look” a minimum of five times during a 20 minute duration with 100% accuracy (zero prompts) across three sessions and two line staff.
- Client will request for attention via saying a person’s name a minimum of five times during a 20 minute duration with 100% accuracy (zero prompts) across three sessions and two line staff.
- Client will request for attention via saying “watch me” a minimum of five times during a 20 minute duration with 100% accuracy (zero prompts) across three sessions and two line staff.
- Client will request for attention via saying “excuse me” a minimum of five times during a 20 minute duration with 100% accuracy (zero prompts) across three sessions and two line staff.
- Client will request for attention via tapping somebody on their shoulder a minimum of five times during a 20 minute duration

with 100% accuracy (zero prompts) across three sessions and two line staff.

In the area of “expressive language”, the treatment plan indicates that Petitioner has made progress with answering personal information questions and using correct pronouns of “your” and “my” when presented with a questions asking who an item belongs to. She is able to receptively identify common items by functions, features and classes when presented with an array of pictures but has difficulty expressively labeling these same traits without picture cards. The following goals are in the plan:

- Client will expressively identify at least 30 common objects according to their feature with 100% accuracy across three consecutive sessions and two different line staff.
- Client will expressively identify at least 30 common objects according to their function with 100% accuracy across three consecutive sessions and two different line staff.
- Client will expressively identify at least 30 common objects according to their class with 100% accuracy across three consecutive sessions and two different line staff.

In the area of “social interaction”, the plan states that the Petitioner has progressed in correctly answering conversation skills questions and is showing emergency of reciprocating the same question back after answering. She has replaced instances of scripting upon somebody entering the home with appropriate greetings. It notes that she has partially mastered the goals of answering and reciprocating at least 5 questions with 100% accuracy across three sessions and answering and reciprocating ten conversation questions with 100% accuracy across five days.

8. On August 22, 2013, the agency denied the PA request finding that the services requested are duplicative and therefore do not meet the criteria for approval.
9. On September 20, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

Medical assistance covers speech therapy if the recipient obtains prior authorization after the first 35 visits. Wis. Admin. Code § DHS 107.16(2)(b). The Petitioner’s provider has requested speech/language therapy services 2x/week for 26 weeks. The OIG denied the request. When determining whether a service is necessary, the Division of Hearings and Appeals must determine whether the service is medically necessary, which in turn requires it to determine whether the service duplicates other services the recipient receives. Wis. Admin. Code, §§ DHS 107.02(3)(e)1. and 101.03(96m)(b)6.

The goals of both Vision Forward and Applied Behavior Analysts is to seek to help Petitioner understand and respond to others in a way that she can be understood, to interact better, to express needs and wants and to increase safety awareness.

The ABA treatment plan submitted on the Petitioner’s behalf post-hearing indicates that it provides her with 108 hours/month of therapy. Much of this pertains to improving her speech and language skills. As long as ABA is providing therapy to aid the Petitioner’s ability to communicate, I am bound by medical assistance rules and regulations pertaining to duplication and the final decisions issued by the Department interpreting those rules.

Deputy Secretary Susan Reinardy held in DHA Final Decision No. MPA-37/80183, another 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. The deputy secretary has also specifically addressed the contention that in-home autism providers do not use speech therapists, calling it “beside the point” because the “in-home staff members are utilizing techniques learned from a licensed ST to carry over to petitioner’s home environment.” Final Decision No. MPA-37/80183.

This decision, along with other similar decisions (see MPA 147691, MPA 146575 and MPA 145440) require that I look at the goals of each and determine whether they duplicate each other. While there are some differences between the two sets of goals and the methods of reaching those goals, the intended outcome sought by each provider is similar. Because both providers are seeking to impart the same basic functional skills of communication on the petitioner, I must find that they duplicate each other. Because the goal of the therapies is duplicative, the OIG correctly denied the Petitioner’s PA request for services from Vision Forward.

CONCLUSIONS OF LAW

The Office of Inspector General correctly denied the Petitioner’s request for speech and language therapy from Vision Forward because those services duplicate services she already receives from the Wisconsin Applied Behavior Analysts.

THEREFORE, it is

ORDERED

That the petition be, and hereby 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 Milwaukee,
Wisconsin, this 10th day of December, 2013

\sDebra Bursinger
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 10, 2013.

Division of Health Care Access And Accountability