



FH
[REDACTED]

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

In the Matter of

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

DECISION

MPA/152579

PRELIMINARY RECITALS

Pursuant to a petition filed October 02, 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 November 06, 2013.

The issue for determination is whether the petitioner is entitled to medical assistance reimbursement for speech and language therapy.

There appeared at that time 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: 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 Milwaukee County.

2. On or about July 16, 2013, the petitioner with his provider, [REDACTED], requested 52 sessions of speech therapy beginning on August 8, 2013. After three requests for corrections/additional information, the Office of Inspector General denied the request on August 26, 2013. Exhibit 2.
3. The petitioner is a seven-year-old child diagnosed with pervasive developmental disorder, symbolic language disorder, and articulation/phonological disorder. Testing in September of 2012, indicated that his expressive language was in the 1st percentile, and his articulation was in the 18th percentile. No comparison data was supplied with the Prior Authorization request to establish petitioner's percentiles in 2013. Exhibit 3.
4. The petitioner receives speech therapy through his school district.

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). On or about July 16, 2013, the petitioner with his provider, [REDACTED], requested 52 sessions of speech therapy beginning on August 8, 2013. After three requests for corrections/ additional information, the Office of Inspector General denied the request on August 26, 2013.

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. Admin. 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.

One way the Division ensures that speech therapy meets these criteria is to bar additional therapy if "the recipient has shown no progress toward meeting or maintaining established and measurable treatment goals over a 6-month period..." Wis. Admin. Code § DHS 107.18(3)(e)1. The petitioner is a seven-year-old child diagnosed with pervasive developmental disorder, symbolic language disorder, and articulation/phonological disorder. Testing in September of 2012, indicated that his expressive language was in the 1st percentile, and his articulation was in the 18th percentile. However, no comparison data was

supplied with the Prior Authorization request to establish petitioner's percentiles in 2013. The respondent complains that it requested information to demonstrate petitioner's progress, but the provider has not submitted this evidence. Because the record does not demonstrate that petitioner is closer to age-appropriate language levels than he was last year, it is impossible to determine that he has made progress. His request can be denied on that ground alone.

The service also duplicates therapy the petitioner receives from his school district. Petitioner's mother strongly argued that petitioner's school-based therapy does not address the social aspect, and emphasizes phonics. However, her testimony is contradicted by petitioner's school-based therapy goals, which specifically include goals to "[i]ncrease [petitioner's] ability to interact and play with peers appropriately with adult guidance from 20% to 50% of the time." Exhibit 3. Petitioner's mother further stated that petitioner's anger issues were managed well while he was enrolled in therapy with [REDACTED], and that his social skills have regressed. While I understand that [REDACTED]'s therapy is valuable to the petitioner, I am bound by the rules and 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 unstated rationale underlying the deputy secretary's decision is that federal law requires school districts to meet the special needs of its students and the department will not allow a district's failure to comply with this obligation to provide the reason for funding another source of therapy. The requested therapy duplicates therapy the petitioner receives at school because the overall goal of each is the same.

Furthermore, private therapists are expected to coordinate their services with other providers to avoid duplication. The petitioner and his provider have the burden of proof in this appeal. This means that to prevail they must present enough evidence to show that they meet the legal requirements for receiving speech therapy. If the provider submits no evidence of coordination, it is impossible to determine whether the petitioner meets the legal requirement that the requested therapy not duplicate other services he already receives. To ensure coordination, speech therapy guidelines specifically require that providers submit "[d]ocumentation of coordination of the therapy treatment plan with these other service providers," including schools, before the request can be approved. *Prior Authorizations Guidelines Manual*, § 113.001.03. Despite a specific request by the respondent, [REDACTED] did not specify how it would coordinate services with the school to avoid duplication. Petitioner's mother testified that she signed a waiver to allow [REDACTED] to speak with the school-based providers, and that she provided it with petitioner's school-based Individual Education Plan. However, this does not satisfy the provider's obligation to provide the respondent with evidence of coordination.

For the reasons listed above, I find that the Office of Inspector General correctly denied the petitioner's request for speech therapy.

CONCLUSIONS OF LAW

The requested speech therapy is not medically necessary because it has not been shown to be effective and it duplicates therapy the petitioner receives at school.

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 19th day of December, 2013

\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