



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MPA/151141

PRELIMINARY RECITALS

Pursuant to a petition filed August 01, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Office of the Inspector General (OIG) in regard to Medical Assistance, a telephonic hearing was held on September 17, 2013, at Fond Du Lac, Wisconsin.

The petitioner's mother, [redacted], represented the petitioner for that hearing. During that hearing, petitioner's representative requested that the record be held open for documents to be submitted to the Division of Hearings and Appeals, and then for those documents to be sent to the Office of the Inspector General (OIG) for a reconsideration decision with an opportunity for a reply by Ms. [redacted].

This Administrative Law Judge (ALJ) sent an October 19, 2013 letter to Ms. Chucka at the Office of the Inspector General (OIG) with a packet of documents which were received at DHA on October 8, 2013, and then a second packet faxed to DHA on October 14, 2013. In that letter, this ALJ requested that Ms. Chucka review the enclosed copies of letters/documents, and submit a detailed reconsideration summary to me at the Division of Hearings and Appeals by November 5, 2013 with a copy of that reconsideration summary letter to also be sent to the petitioner's representative.

The petitioner's representative was granted until November 15, 2013 to submit any response to Ms. Chucka's reconsideration summary to DHA and to Ms. Chucka. Both parties timely submitted their documents to DHA. In her reconsideration (after reviewing the new evidence), Ms. Chucka confirmed that OIG continued to deny the PA request due to petitioner not establishing the medical necessity, appropriateness, or effectiveness of the requested OT services. The petitioner submitted a written reply disputing the continued OIG denial of private OT.

The issue for determination is whether the Department correctly denied the petitioner's prior authorization (PA) request for once weekly occupational therapy (OT) for 26 weeks.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Representative:

[redacted], mother
[redacted]

Respondent:

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

By: Mary Chucka, occupational therapy consultant  
Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:  
Gary M. Wolkstein  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is an 8 year old resident of Fond Du Lac County who resides in a private residence with his sister and mother, [REDACTED] [REDACTED]. The petitioner receives MA benefits.
2. The petitioner is diagnosed with Autism and pervasive developmental disorder.
3. Petitioner is basically independent in feeding and dressing himself. He is completing tasks within the normal limits in the self-care domain, although there some areas he needs assistance (tying his shoes or fasteners on his pants).
4. The petitioner wears “noise cancelling” headphones much of the time due to auditory sensitivity (problems with sensory processing, tolerance to “noise,” and sensory integration).
5. On or about June 13, 2013, petitioner’s provider, St. Agnes Hospital, made a prior authorization request (PA # [REDACTED]) on behalf of the petitioner for private Occupational Therapy (OT) services at a frequency of once per week for 26 weeks with total requested charges of \$7,774.00. See Exhibit 2.
6. The petitioner participated in Birth to Three Program which transitioned to Early Childhood in the public school at the age of three years. He received speech, physical and occupational therapies through the program.
7. [REDACTED] attend first grade at the [REDACTED] in Fond du Lac, WI.
8. In the petitioner’s January, 2013 Individualized Educational Program (IEP) through the Fond du Lac School District, the plan includes the following: a) adapted physical education; b) regular vocational education; c) supplemental written support; d) social skills training; e) speech language therapy (SLT); f) occupational therapy services; g) sensory breaks and sensory breaks before specials; h) seating by a helpful peer; i) preferential seating close to teacher to assist with attention which was developed and implemented for him in the school; and j) one on one instruction of [REDACTED] during parts of the school day.
9. The Office of the Inspector General (OIG) sent a notice to the petitioner denying the prior authorization request for OT because the PA request did not include documentation to establish the medical necessity for OT services based upon the requirements of the Wisconsin Medicaid Forward Health program and that some of the requested OT services (sensory integration) were not covered services. Specifically, OIG concluded that petitioner did not establish the medical necessity for petitioner’s fine motor skills deficits required the skills of an occupational therapist,

or that the skills of an OT were effective or appropriate to treat petitioner's auditory sensitivity or problems with sensory processing abilities/tolerance to "noise.

10. OT services have been approved for petitioner's sister, but OIG provided sufficient persuasive information to distinguish why the sister's medical conditions and limitations are substantially different from the petitioner's.
11. OIG provided the following reasons for the denial of OT services for the petitioner: a) the PA request did not establish with sufficient justification or documentation that the specific expertise of a skilled occupational therapist was medically necessary or appropriate for the petitioner; b) the provider's evaluation of [REDACTED] lists that he can do most ADL's but requires assistance with a few (tying shoes or fasteners); c) an OT provider must correlate functional ADL status with specific limitations, and that therapist needs to rule out other possible reasons for functional limitations when asserting problems should be addressed by OT therapy services; d) OIG questions OT therapy for "sensory sensitivities" as effective for individuals with autistic spectrum disorder; and e) the provider has not established that the requested OT services are appropriate and effective for the petitioner. See Exhibit 1.
12. In her November 4, 2013 reconsideration, OIG asserted the following reasons for its continued denial for the requested private OT services for petitioner: a) OIG questions the effectiveness or appropriateness of occupational therapist to address the central problems of petitioner overly wearing noise cancelling headphones or his sensitivity to noise; b) the justification for OT services was not established with specific reliable evidence by an audiologist regarding what if anything private OT can do to help petitioner with his auditory sensitivity problems with sensory processing abilities and tolerance to sensory integration; c) OIG questions why a "specialty" audiology provider would refer an individual to an OT provider to address sound sensitivity; d) an OT is not the appropriate specialist to assist petitioner to reduce his use of headphone or to gradually increase his exposure to more sound; e) "therapeutic listening" is not a covered benefits of the Wisconsin Medicaid program; f) the reduction of headphone usage and sound desensitization are more appropriately performed by speech therapists or audiologists; g) the provider did not offer specific objective documentation to establish what specific steps or actions in OT services would help [REDACTED] to be more independent in any ADL or IADL tasks; and h) OIG had many valid questions about the appropriateness of OT for other "sensory sensitivity" problems.
13. In the October 2, 2013 audiology evaluation of [REDACTED], the audiologist, Stephanie Long, AuD, recommended 9 strategies for helping [REDACTED] with his sound sensitivity with the goal of reducing his need to wear sound cancelling headphones. Eight of the nine strategies were for other than occupational therapy. The only OT strategy was vaguely for "noise tolerance training," but did not establish the medical appropriateness or effectiveness of an OT to provide that therapy (versus an audiologist or speech therapist). One of those strategies was for petitioner to use computer programs like "Earobics" or Hearbuilder."
14. The petitioner's mother submitted a November 7, 2013 response to the OIG's reconsideration. In that response, Ms. [REDACTED] explained the various medical professionals (school audiologist, speech therapist, and occupational therapist) that are working with [REDACTED] in school regarding his noise sensitivity and the concern about his frequent need for headphones. She also responded in general terms to the categories presented in the reconsideration summary, and provided additional testing documentation about [REDACTED].

## DISCUSSION

Occupational therapy (OT) is an MA-covered service, subject to prior authorization after the first 35 treatment days per spell of illness. Wis. Admin. Code §DHS 107.17(1),(2). In determining whether to approve OT services, the Division must consider the generic prior authorization review criteria listed at Wis. Admin. Code §DHS 107.02(3)(e). Those criteria include the requirement that the requested service be **medically necessary, appropriate**, and that it not duplicate other available services. *Ibid.* To be medically necessary, a service must be required to treat a recipient's illness or disability. See Wis. Admin. Code §DHS 101.03(96m). See *Prior Authorization Guidelines Manual*, 112.001.

The OIG denied the request for private OT services because petitioner did not establish the medical necessity, appropriateness and effectiveness of the OT services. Included in the definition of “medically necessary” at § DHS 101.03(96m)(b) are the requirements that services be of proven medical value or usefulness, that services not be duplicative of other services, and that services be cost effective when compared to alternative services accessible to the recipient. The mere assertion, even of a doctor or clinician, that a person needs a specific service *is not the same thing* as demonstrating with factual evidence the nature of the deformity, limitations, measurements of such deformities or limits, and clinical evidence that establishes such services are in fact medically necessary as that term is defined by the MA Program, and as applied to the specific services sought.

In this case, the OIG consultant denied the petitioner’s PA request for the reasons explained in Findings of Fact #11 and # 12 above. At the request of petitioner’s representative, the record was held open for documents to be sent to the Division of Hearings and Appeals (DHA), and then to be submitted to the OIG for a reconsideration decision. Ms. Chucka submitted a detailed November 4, 2013 reconsideration to DHA and the petitioner’s mother and representative (██████████). In that reconsideration, OIG confirmed that after reviewing the petitioner’s documents, it continued to assert that the petitioner’s provider has not established the requested OT services are medically necessary and appropriate. See above Findings of Fact. Petitioner’s representative submitted a November 7, 2013 response to that reconsideration summary to DHA. However, that response did not reliable evidence to refute the reasons provided by OIG in its reconsideration summary.

The burden of proof was upon the petitioner and his provider to establish the medical necessity of the requested OT services. The petitioner and his provider have not met that burden. While the hearing record is clear that ██████ has serious medical and auditory sensitivity problems, the petitioner has not established with sufficient clinical evidence that the requested private OT services are medically necessary, appropriate or effective by an occupational therapist. Accordingly, for the above reasons, I conclude that the Department correctly denied the petitioner’s June, 2013 prior authorization (PA) request for private occupational therapy (OT) services for the petitioner because the petitioner failed to establish the medical necessity, appropriateness, or effectiveness of those requested services.

## CONCLUSIONS OF LAW

The Department correctly denied the petitioner’s June, 2013 prior authorization request for occupational therapy services because the petitioner failed to establish the medical necessity, appropriateness or effectiveness of those requested OT services.

**THEREFORE, it is**

**ORDERED**

The petition for review herein be and the same is hereby 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 10th day of January, 2014.2014

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\sGary M. Wolkstein  
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 January 10, 2014.

Division of Health Care Access and Accountability