



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

DECISION

MPA/151142

PRELIMINARY RECITALS

Pursuant to a petition filed August 05, 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 October 23, 2013, at Green Bay, Wisconsin. At the request of petitioner's representative, the record was held open for the submission of new medical evidence to respond to the Department's denial summary by the OIG consultant. Petitioner did submit some evidence (originals not copies as instructed) to the Division of Hearings and Appeals (DHA). DHA copied those originals, and sent copies to the OIG speech and occupational therapists for each consultant to review and issue a reconsideration summary to DHA and Ms. [Redacted]. DHA returned the originals to the petitioner. Each consultant issued a reconsideration summary to DHA and petitioner's representative which are received into the hearing record. The petitioner did not submit any reply to DHA regarding either of the OIG consultants' reconsiderations even by the date of this decision.

The issue for determination is whether the Department correctly denied the petitioner's May, 2013 prior authorization (PA) request for 12 weeks of occupational therapy (OT) during the summer of 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

Representative:

[Redacted] [Redacted], mother
[Redacted]
[Redacted]

Respondent:

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

By: Mary Chucka, occupational therapy consultant
Office of the Inspector General (OIG)
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 a resident of Brown County who resides at home with her family. Petitioner is certified for MA benefits.
2. The petitioner has received MA approval for occupational therapy services through the [REDACTED], Inc. center in Green Bay during the summers of 2009 – 2012.
3. The petitioner is diagnosed with autism, epilepsy, and Attention Deficit Disorder (ADD), hemiplegia, and Developmental Disorder.
4. The petitioner is a student in the Green Bay Area Public School District where she receives special education and speech, physical and occupational therapy services according to her Individual Educational Plan (IEP). The school district does not provide occupational, speech or physical therapy during the summer months for the petitioner.
5. The petitioner has been receiving Botox injections into her right arm since at least 2011 to help with “soft tissue” movement issues.
6. On or about May 24, 2013, the occupational therapy provider, [REDACTED], requested prior authorization (PA) on behalf of the petitioner for MA coverage of individual private occupational therapy services from the Office of the Inspector General (OIG) at the frequency of once weekly for 12 weeks during the summer of 2013. See Exhibit 2.
7. On or about June 28, 2013 the Office of the Inspector General (OIG) sent a notice to the petitioner denying the prior authorization request for individual occupational therapy because the submitted documentation did not establish the medical necessity of the requested private OT during the summer of 2013, and the provider did not provide specific quantitative or qualitative documentation showing occupational therapy progress in any ADLs as a result of past OT services to petitioner during prior summers. See Exhibit 1.
8. The record was held open for the following: a) petitioner to submit new evidence to DHA; b) for OIG to review that new evidence and submit a reconsideration summary to DHA and petitioner’s representative; and c) for petitioner’s representative to submit a reply to that reconsideration to DHA regarding the medical necessity of the requested occupational and speech and language therapy services during the summer of 2013. See above Preliminary Recitals.
9. After reviewing the petitioner’s submissions, Department OT consultant, Mary Chucka, issued a December 27, 2013 reconsideration summary to DHA and the petitioner’s representative. In that reconsideration, OIG continued to deny the requested occupational therapy during the summer of 2013 based upon lack of established medical necessity due to the following factors: 1) the provider did not submit a procedure code for the requested OT services; 2) the provider failed to establish with any reliable medical evidence that the skills of an occupational therapist are needed as petitioner has received Botox injections since 2011; 3) the provider failed to document the need for the skills of an OT in objective terms and in direct correlation to any specific functional abilities or limits of the petitioner (too vague to say to “maximize the availability of soft tissue length); 4) the provider does not establish what functional abilities in self-care skills will improve if the petitioner participates in hippotherapy and justify why the skills of an OT are necessary for such hippotherapy.
10. The petitioner’s representative did not submit to DHA any response to the Department’s reconsideration as summarized in Finding of Fact #9 above.

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**, 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). OT can certainly be an appropriate service for dealing with the motor skills deficits that often accompany the petitioner's diagnosis. 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 # 7 and #9 above. At the request of petitioner's representative (mother), 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 December 27, 2013 reconsideration to DHA and the petitioner's 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 during the summer of 2013 were medically necessary and appropriate. Furthermore, petitioner's representative failed to submit to DHA any response to that reconsideration summary even by the date of this decision to refute OIG's reconsideration.

The burden of proof was upon the petitioner and her provider to establish the medical necessity of the requested OT services. The petitioner and her provider have not met that burden. While the hearing record is clear that [REDACTED] has serious medical and behavioral problems, the petitioner has not established with sufficient clinical evidence that the requested private, summer OT services are medically necessary or appropriate. Accordingly, the Division correctly denied the petitioner's May, 2013 prior authorization (PA) request for private occupational therapy (OT) services for the summer of 2013 for petitioner because the petitioner failed to establish the medical necessity and appropriateness of those requested services.

CONCLUSIONS OF LAW

The Department correctly denied the petitioner's May, 2013 prior authorization (PA) request for 12 weeks of occupational therapy during the summer of 2013 because the petitioner failed to establish the medical necessity and appropriateness of those requested 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 3rd day of February, 2014

\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 February 3, 2014.

Division of Health Care Access and Accountability