



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION

MPA/151143

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 Inspector General (OIG) in regard to Medical Assistance, a hearing was held on October 23, 2013, at [Redacted], 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. The petitioner did not submit any reply to DHA regarding the OIG consultant's reconsideration.

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

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
[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: Theresa Walske, speech 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 14 year old resident of Brown County who resides at home with her family. Petitioner is certified for MA benefits.
2. The petitioner has received MA approval of 10 past prior authorizations (PA) requests for private speech therapy services from the provider, [REDACTED], since 2005.
3. The petitioner is diagnosed with autism, epilepsy, and attention deficit disorder (ADD).
4. The petitioner is a student in the [REDACTED] School District where she receives special education and speech and language services. The school district does not provide speech therapy during the summer months for the petitioner.
5. The petitioner received speech therapy through the [REDACTED] center in [REDACTED] during the summer of 2005 – 2012.
6. The petitioner's new provider, Rehab Resources, Inc. met the petitioner during May, 2013.
7. On or about May 16, 2013, the speech language provider, Rehab Resources, Inc., requested prior authorization (PA) on behalf of the petitioner for MA coverage of individual private speech & language 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.
8. On June 12, 2013 the Office of the Inspector General (OIG) sent a notice to the petitioner denying the prior authorization request for individual speech and language therapy because the submitted documentation did not establish the medical necessity of the requested private SLT during the summer of 2013, and the provider did not provide documentation showing speech language progress as a result of past SLT services to petitioner during prior summers. See Exhibit 1.
9. 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 regarding the medical necessity of the requested speech and language services during the summer of 2013. See above Preliminary Recitals.
10. After reviewing the petitioner's submissions, Department SLT consultant Theresa Walske issued a December 26, 2013 reconsideration summary to DHA and the petitioner's representative. In that reconsideration, DHCF continued to deny the requested speech language therapy during the summer of 2013 based upon lack of medical necessity due to the following factors: 1) Rehab Resources, Inc. did not provide standardized test scores to compare to previous years to document progress. The goals established by the provider have not changed over time as would be expected as a member's skill increase or improve; 2) the provider alleged in an August 14, 2013 letter the petitioner had regressed during that summer, but failed to offer any qualitative or quantitative measurements to support such alleged regression; 3) if school is not in session, there is no school summer therapy. However, the MA program does not cover provision of summer speech therapy sessions unless the requested SLT services meet the definition of medical necessity; 4) the petitioner's provider has not established the medical necessity of private speech therapy during the summer of 2013 when school SLP services were not provided; 5) the provider has not established or justified the medical necessity of the 2013 summer SLP request or why the additional skills of a private SLP over the summer months was medically necessary; 6) If the school had concern that [REDACTED] would not be able to maintain or recoup skills in the fall of 2013 due to not being in SLP therapy over the summer, the school would be obligated to provide

extended school year (ESY) services of speech therapy services; 7) there was no documented change in petitioner's status over the 2013 summer months that would have led to a decrease or setback in her speech and language status (would regress if SLP services were not provided over the summer months); 8) there was no reliable evidence that the petitioner would regress if SLT services were not provided during the summer months based upon past summers of services with no documented progress; and 9) most of the provider's goals for the summer SLT were the same as being addressed by the school SLT during the school year and therefore the summer SLT was duplicative.

11. The petitioner's representative did not submit to DHA any response to the Department's reconsideration as summarized in Finding of Fact #10 above.

DISCUSSION

Speech and language therapy is an MA-covered service, subject to prior authorization after the first 35 treatment days. Wis. Adm. Code § DHS 107.18(2). In determining whether to approve such a therapy request, the Bureau employs the generic prior authorization criteria found at § DHS 107.02(3)(e). Those criteria include the requirements that a service be medical necessary, appropriate, and an effective use of available services. "Medically necessary" services are those "required to prevent, identify or treat a recipient's illness, injury, or disability. Wis. Adm. Code § DHS 101.03(96m)(a).

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. When speech therapy is requested for a school age child in addition to therapy provided by the school system, the request must substantiate the medical necessity of the additional therapy as well as the procedure for coordination of the therapies. Prior Authorization Guidelines Manual, Speech Therapy, page 113.001.02. It is up to the provider to justify the provision of the service. Wis. Adm. Code § DHS 107.02(3)(d)6.

During the fair hearing process, it is generally accepted that the state or county agency, as the party which has taken the action appealed from bears the burden of proof of the propriety of that action. *See State v. Hanson*, 98 Wis.2d 80, 295 N.W.2d 209 (Ct.App.1980). Like most public assistance benefits, however, the initial burden of demonstrating eligibility for any particular benefit or program at the operational stage falls on the applicant, *Gonwa v. Department of Health and Family Services*, 2003 WI App 152, 265 Wis.2d 913, 668 N.W.2d 122 (Ct.App.2003). In other words, it was petitioner's burden to demonstrate that he qualified for the requested private speech and language services during the summer of 2013.

An applicant will need to demonstrate that the procedure for which he or she seeks approval is "medically necessary." A "medically necessary" service is

[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;

5. Is of proven medical value or usefulness and, consistent with s. DHS 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.

Wis. Admin. Code §DHS 101.03(96m).

The crux of the Division's denial of petitioner's request is that the petitioner has not established that private weekly speech and language therapy during the summer of 2013 was medically necessary when school SLT was not provided. The Department further argued that if medically necessary, the school was required to provide such continued SLT during the summer months. The petitioner submitted documents while the record was held open for OIG's review. However, those letters and documents did not establish and justify why the skills of a private speech language therapist (SLT) during the summer of 2013 was medically necessary. After reviewing the petitioner's submission while the record was held open, OIG submitted its reconsideration summary which established why it continued to deny the petitioner's PA request for SLT during the summer of 2013. See Finding of Fact #10 above. Petitioner's representative did not submit to DHA any response to the Department's reconsideration to refute OIG's continued PA denial.

It is the responsibility of the fee-for service provider to justify MA coverage of the service to OIG. The provider has not established such justification for the requested private SLT for the petitioner during the summer of 2013. While the petitioner's mother's desire for ██████████ to receive as much SLT as possible to continue her progress is commendable, the petitioner has not established that the requested summer private SLT was medically necessary. Accordingly, for the above reasons, I conclude that the Department correctly denied the petitioner's May, 2013 prior authorization (PA) request for 12 weeks of speech therapy during the summer of 2013.

CONCLUSIONS OF LAW

The Department correctly denied the petitioner's May, 2013 prior authorization (PA) request for 12 weeks of speech therapy during the summer of 2013.

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