



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/152682

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 07, 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 19, 2013, at Eau Claire, Wisconsin.

The issue for determination is whether the petitioner is entitled to medical assistance reimbursement for physical therapy.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Pamela Hoffman

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

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Eau Claire County.

2. On July 23, 2013, the petitioner with Optimum Therapies requested six weekly half-hour physical therapy sessions at a cost of \$1,728. The Office of Inspector General denied the request on August 29 2013.
3. The petitioner is a 28-year-old woman diagnosed with spina bifida, lumbar paralysis, and Arnold Chairi Malformation II, a condition that occurs when brain tissue extends into the spinal column.
4. The petitioner has head, shoulder blade, and neck pain.
5. Optimum Therapies seeks to reduce the petitioner's pain so that she can operate her manual wheelchair and lift more than 20 pounds from the floor.
6. Optimum Therapies proposes the following techniques to treat the petitioner's pain:
  - a. Therapeutic Exercise incorporating verbal, manual and proprioceptive performance cues and instruction with a focus on stretching limited upper cervical, mid cervical and upper thoracic joints and adjacent myofascia and tight neck and shoulder girdle muscles to enable optimal pain free neck movement and maximize safe and headache-free function.
  - b. Manual Therapy soft tissue mobilization, joint mobilization and manual stretching procedures to the hypomobile upper cervical vertebral segments and myofascia to improve the soft tissue and joint mobility required for optimal neck active, passive and accessory movements and for normal neck function.
  - c. Ultrasound to promote healing and reduce inflammation of involved tissues.
  - d. Electrical Stimulation – Unattended 97014 to reduce pain and inflammation in the involved region.

### DISCUSSION

Medical assistance covers physical therapy if the recipient obtains prior authorization after the first 35 visits. Wis. Admin. Code, § DHS 107.16(2)(b). 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. Adm. 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.

The petitioner is a 28-year-old woman diagnosed with spina bifida, lumbar paralysis, and Arnold Chairi Malformation II, a condition that occurs when brain tissue extends into the spinal column. She seeks treatment for head, shoulder blade, and neck pain that has bothered her since she fell while racing in her manual wheelchair a few years ago. Her provider, Optimum Therapies, seeks to reduce her pain so that she can operate her manual wheelchair and lift more than 20 pounds from the floor. She contends that she spends less time in the hospital if she receives therapy, although she provided no evidence of this. Optimum Therapy proposes various methods to treat her pain, including stretching, manipulation, ultrasound, and electrical stimulation.

A home-exercise program that the petitioner performs by herself is cheaper than a program that requires a therapist, but she contends that this is not possible because her paraplegia prevents her from doing the stretching and other movements on her own. It is unclear how she can operate a manual wheelchair and lift over 20 pounds if she cannot perform basic physical therapy exercises. Regardless of what exercises are involved in her therapy, it appears that the primary focus is to manipulate her upper body to reduce pain by relieving muscle tightness and tension.

The petitioner has the burden of proving by the preponderance of the credible evidence that the requested therapy is necessary, which means that she must show that the service is cost-effective and that there are not less expensive services available that can meet her needs. She has requested six weekly half-hour sessions—or three hours of therapy—at a cost of \$1,728. This comes to over \$600 per hour. The primary benefit provided by the proposed therapy, reducing muscle tightness and tension, is also benefit of a massage. Massage is covered as a physical therapy technique. Wis. Admin. Code, § DHS 107.16(1)(d)6.e. In the Chippewa Valley, a massage is available from a certified practitioner for \$60 to \$75 per hour, or around one-tenth of the cost of the requested therapy. Although massage therapy would not offer all of the techniques proposed by Optimum Therapy, there is no evidence that these techniques would reduce the petitioner's pain any more than a massage would. Further, it is difficult to understand how Optimum Therapy could effectively use all of these methods in a half-hour session. If different treatments were used in different sessions, it would mean that the petitioner could go several weeks without receiving the same type of treatment; if she can go several weeks without requiring a particular type of treatment, it is questionable whether that treatment is medically necessary. For these reasons, the Office of Inspector General's denial is upheld.

### **CONCLUSIONS OF LAW**

The requested therapy is not medically necessary because it is not cost-effective.

**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 3rd day of January, 2014

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\sMichael D. O'Brien  
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 3, 2014.

Division of Health Care Access and Accountability