



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/153150

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 29, 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 21, 2013, at West Bend, Wisconsin.

The issue for determination is whether the agency properly modified the Petitioner's request for PT services.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[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:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Washington County. She is 7 years old and lives at home.

2. Petitioner's diagnoses include cerebral palsy, gait abnormality, ADHD, congenital hemiplegia, seizure history and visual impairment. Her cognitive level is approximately at 3 – 4 years.
3. On August 29, 2013, a PA request was submitted on behalf of the Petitioner by her provider, Rehab Resources, requesting 13 PT visits for 90 days beginning September 10, 2013.
4. On July 9, 2013, the Petitioner was evaluated by the provider. The plan of care submitted with the PA request notes the Petitioner's functional limitations include inefficient gait pattern with frequent falls, unable to talk with heel contact on left, increased falls on uneven surfaces and at level changes, inability to get in and out of tub without assist, inability to step up and down curbs without assist for balance, need to sit for dressing. Additional impairments include muscle weakness in core and left arm and leg, decreased active and passive range of motion in left ankle, unreliable balance and asymmetrical movement patterns. It indicates that PT is required on a weekly basis to work on strengthening core and lower left extremities, increase range of motion, balance and weight shift activities to decrease falls and facilitate improved gait pattern, work on functional mobility on stairs and negotiating obstacles as well as transfers and balance for dressing.
5. The PA request indicates the member ambulates independently inside and outside the home with supervision for safety, transfers independently with supervision for safety, goes up and down stairs with supervision for safety and transfers in and out of tub with assistance for safety. The provider and Petitioner's mother indicate that she falls frequently.
6. Petitioner wears an ankle foot orthotic (AFO).
7. Petitioner does not receive PT services at school.
8. On September 23, 2013, the agency approved 6 PT visits for the Petitioner.
9. On October 29, 2013, an appeal was filed on the Petitioner's behalf with the Division of Hearings and Appeals.

### DISCUSSION

Physical therapy is covered by MA under Wis. Admin. Code, §DHS 107.16. Generally it is covered without need for prior authorization (PA) for 35 treatment days, per spell of illness. Wis. Admin. Code, §DHS 107.16(2)(b). After that, PA for additional treatment is necessary. If PA is requested, it is the provider's responsibility to justify the need for the service. Wis. Admin. Code, §DHS 107.02(3)(d)6.

In reviewing a PA request the agency must consider the general PA criteria found at §DHS 107.02(3) and the definition of "medical necessity" found at §DHS 101.03(96m). §DHS 107.02(3)(d) requires justification for provision of the requested service to be included in the PA request. §DHS 107.02(3)(e) requires the agency to consider the following criteria in determining whether the request may be approved:

1. The medical necessity of the service . . .
3. The cost of the service; . . .
4. The frequency of furnishing the service . . .
6. The extent to which less expensive alternative services are available; . . .
7. The effective and appropriate use of available services; . . .

Wis. Admin. Code § DHS 107.02(3)(e).

The agency has interpreted the code provisions to mean that at some point the therapy program should be carried over to the home, without the need for professional intervention.

In this case, the agency argues that the provider has not provided sufficient information to support the requested service. In particular, the agency asserts that the provider has not submitted objective documentation to support any of the Petitioner's identified impairments is the cause of any of Petitioner's identified functional limitations. In addition, the agency contends the provider has not supported her intention to treat the Petitioner's impairments by documenting a specific impairment that requires the skills of a PT. Specifically, the agency notes that the Petitioner's functional limitations are not supported with documentation of a gait analysis, measurement of the number of falls and causes, how much assistance is needed to get in and out of tub, what prevents Petitioner's balance for curbs, how Petitioner gets dressed and why she must stand up to get dressed and the provider has not submitted objective documentation that weekly treatment by a skilled PT of any identified impairment will allow the Petitioner more independence than she currently has in her home. Also, the report of increased falling is insufficient to support the need for a skilled PT's interventions though the skills may be needed to determine she is falling more and why. The agency contends that the Petitioner's range of motion and functional abilities can be improved with a home exercise program and there is no documented need for the skills of a PT once/week to implement a home exercise program.

The Petitioner's mother, home health aide and PT testified at the hearing. The PT noted that the evaluation does discuss the Petitioner's gait abnormality but no formal analysis was done because it is difficult to obtain a formal analysis from the Petitioner with her ADHD and other medical issues. The PT noted that she did provide the measurements of the Petitioner's range of motion. The PT also testified that there is no documentation of the number of falls because it varies from day to day and depends on the circumstances. The PT noted that the Petitioner's muscle weakness in her core and extremities causes the Petitioner's functional limitations and that she intends to treat the Petitioner's muscle weakness. The Petitioner's mother testified that she has MS and is unable to help the Petitioner as much as she requires. The home health aide indicated that the Petitioner has a new AFO and she needs guidance on how to work with it.

Based on the evidence, I conclude the agency properly approved six PT sessions for the Petitioner. It is the provider's responsibility to submit sufficient information with the PA to support the requested services. In this case, I agree with the agency's conclusion that there is insufficient information to support the need for a skilled PT's services on a weekly basis. The evidence establishes that there is a need for Petitioner's core muscles to be strengthened but there is insufficient evidence to demonstrate why this cannot be accomplished with a home exercise program developed and supported by the PT in six sessions over 13 weeks.

As noted by the agency in its written appearance, if the Petitioner's condition changes, a new or amended request may be submitted with supporting documentation.

### **CONCLUSIONS OF LAW**

The agency properly approved six PT visits for the Petitioner over 13 weeks beginning September 10, 2013.

**THEREFORE, it is**

**ORDERED**

That the petition be, and hereby 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 Milwaukee,  
Wisconsin, this 15th day of January, 2014

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\sDebra Bursinger  
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 15, 2014.

Division of Health Care Access and Accountability