FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]
c/o [redacted]
[redacted]
[redacted]

DECISION

MPA/153739

PRELIMINARY RECITALS

Pursuant to a petition filed November 27, 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 regards to the modification of a prior authorization request for coverage of speech & language therapy (SLT) by Medical Assistance, a hearing was held on December 18, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Department correctly modified a requested SLT regimen from an evaluation and two visits per week for 26 weeks to an evaluation and 13 visits in 26 weeks.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]
c/o [redacted]
[redacted]
[redacted]

Respondent:

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

Written Appearance By: Theresa Walske, M.S., CCC-SLP
Speech & Language 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:
Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a four year-old girl, she lives in Milwaukee County in a private residence with her parents; and she is certified as eligible for Medical Assistance.

2. The petitioner participated in a Birth-to-Three program, and received speech & language therapy (SLT) services from August 2, 2010, to July 7, 2012, in that program.

3. The Medical Assistance Program subsequently approved coverage of two prior speech & language therapy regimens for the petitioner after the Birth-to-Three SLT services ended, i.e., for the period of, en toto, March 5 – September 4, 2013.

4. On August 27, 2013, [redacted] [redacted], SLP-CCC, the petitioner's speech & language therapy provider (SLP), submitted a request for prior authorization of an evaluation session, and thereafter, 2 sessions per week of speech & language therapy, for 26 weeks, at a total cost of $10,650 to the Division of Health Care Access and Accountability (DHCAA).

5. On October 14, 2013, the DHCAA issued a letter notice to the petitioner granting coverage of the evaluation, but modifying the prior authorization request for the 26 weeks duration speech& language therapy, i.e., reducing the requested 52 sessions to an approved amount of 13 sessions. The Department's Speech & Language Therapy Consultant determined that the reduced number of SLT visits is sufficient to meet the petitioner's needs, because she has made very little progress after substantial regimens of SLT, and that the amount approved, on an as needed basis, is the appropriate amount of services to support the petitioner, her family, and her preschool, with information and guidance of "how to foster development of communication…" for the child. See, Exhibit #1, p. 6.

6. Petitioner has been diagnosed with encephalopathy with developmental delays, seizure disorder, moderate myopia and exotropia resulting in depth perception issues and poor visual motor skills. She also lives in a household that is primarily Spanish speaking. She demonstrates "severely delayed speech and language skills".

7. En toto, the petitioner has participated in speech & language therapy and/or special education services in a variety of settings for at least 3 years, 1 month. See, Exhibits #3 & #4.

8. The petitioner attends [redacted], Inc. preschool and her receptive and expressive language skills were tested at that school using the Rossetti Infant-Toddler Language Scale as being scattered at the 6-9 month level in January, 2013; and as scattered at the 9-11 month range in June, 2013. See, Exhibit #1, p.5; and see, Exhibit #2, at p.8. See, also, Exhibits #3 & #4.

9. In April, 2011, the [redacted] Public Schools prepared an Individual Education Program for the petitioner and noted that "At the time of interview, the mother attributed to her a vocabulary of 3 words aqua, papa, and mama. She communicative (sic) needs and wants with a combination of crying (to get the mother's attention) and laughing (to signal that the mother's verbal response has properly verbalized her request)." See, Exhibit #1, p.5. See, also, Exhibits #3 & #4.

10. On January 8, 2013, the provider, [redacted] Inc., noted that "Mom reports that she ([redacted]) used the word 'aqua' for everything and has not expanded her vocabulary despite parent attempt to model and cue words." See, Exhibit #1, p.5; and see, Exhibit #2, at p.8.

11. On August 26, 2013, the provider, [redacted] Inc., noted that "She ([redacted]) uses a few sparse words in Spanish, e.g., 'mama', 'aqua'/water, 'balle'/ball and 'open'. She uses duplicative CV (consonant vowel), e.g., "bababa". She uses a sign for 'more' to request her wants for more music/sound on tape. She mainly cries to get needs met." See, Exhibit #1, p.5; and see, Exhibit #2, at p.8. See, also, Exhibits #3 & #4.

12. On November 27, 2013, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the DHCAA modification of the PA Request as described in Finding of Fact #5, above.

DISCUSSION

Wisconsin's medical assistance (MA) program provides payment for a variety of basic and necessary covered services to state residents. Certain services require prior authorization (PA) from the Department of Health Services (DHS) before payment can be approved to the health care provider furnishing those services, Wis. Admin. Code §DHS 107.02(3)(a). 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 is the petitioner's job to demonstrate that she qualified for the benefits for which she sought approval.

Speech and language therapy is a MA-covered service, subject to prior authorization after the first 35 treatment days. Wis. Admin. Code §DHS 107.18(2). In determining whether to approve such a therapy request, the Division of Health Care Access and Accountability employs the generic prior authorization criteria found at Wis. Admin. Code §DHS 107.02(3)(e). Those criteria include the requirements that a service be medical necessary, appropriate, and an effective use of available services. Included in the definition of "medically necessary" at Wis. Admin. Code §DHS 101.03(96m) are also the requirements that the Department consider the cost, frequency and the extent to which less expensive alternative as available. See also, Prior Authorization Guidelines Manual, Speech Therapy, page 113.001.02. It is up to the provider to justify the provision of the service. Wis. Admin. Code §DHS 107.02(3)(d)6. The State Medicaid Plan must "safeguard against unnecessary utilization of such care and services." 42 USC § 1396a(a)(30)(A); *see also*, 42 C.F.R. § 456.3(a).

The Department's Speech & Language Consultant, Theresa Walske, SLP-CCC, stated in the *Summary* if December 6, 2013, the following rationale for the modification of the requested SLT regimen:

> Researchers Bain and Dollaghan (1991) '…propose that there are three distinct dimensions that contribute to judgments about the clinical significance of changes in client skills, as reflected in the following definition: A clinical significant change is a change in client performance that (a) can be shown to result from treatment rather than from maturation or other uncontrolled factors, (b) can be shown to be real, rather than random, and (c) can be shown to be important, rather than trivial.' (page 264-265).
>
> [redacted], Inc., documents that standardized testing shows [redacted]'s communication abilities have changed 0-3 months between January and June 2013. [redacted] reportedly used 3 words to communicate in 2011. In 2013 she is reported to use four words to communicate. In both 2011 and 2013 she reportedly communicated through crying. It cannot be concluded that [redacted]'s minimal communication change is the result of speech and language therapy more than influences such as maturation or family communication modeling and encouragement. Speech and language therapy at a frequency of two times a week over 26 weeks is not supported by the historic documentation. Thirteen visits have been approved to be used as needed.

The underlying purpose of the state and federal medical necessary requirements is that Medicaid pay only for those services or recipient needs to cure or mitigate a medical condition. In this context, Medicaid may not pay for services that a clinical review determines exceeds the medical necessity criteria.

I am persuaded by the preponderance of the record in this matter that the Consultant correctly determined that the evidence submitted by the petitioner and provider does not establish that the frequency of the requested regimen is medically necessary. Rather, the preponderance of the evidence shows very, very minimal progress by this patient after extensive early childhood speech and language therapy has been applied, and that the amount of 13 visits over 26 weeks, on an as needed basis to facilitate support for foster development of communication, which may include other alternative communication methods, is the medically necessary level of appropriate services at this time. Nothing in this decision prevent the petitioner or provider from filing a new PA Request for a different regimen at any time. At that time, the

provider will again have to justify the level of services sought based upon clinical evidence and quantifiable historical data. The Department's modification of the instant PA Request is affirmed.

CONCLUSIONS OF LAW

That the Division's Speech & Language Consultant has correctly determined that the preponderance of the evidences in this record supports the modification of the petitioner's PA Request from 2 visits per week for 26 weeks to 13 visits as needed over 26 weeks.

NOW, THEREFORE, it is **ORDERED**

That the petition for review 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 27th day of January, 2014

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\sKenneth D. Duren, Assistant Administrator
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 27, 2014.

Division of Health Care Access and Accountability