



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

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In the Matter of

[REDACTED]  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/153884

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 3, 2013, under Wis. Stat., §49.45(5), to review a decision by the Division of Health Care Access and Accountability (DHCAA) to deny Medical Assistance (MA) authorization for occupational therapy (OT), a hearing was held on January 29, 2014, by telephone.

The issue for determination is whether the PA request showed medical necessity for OT.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Written submission of Mary Chucka, OT Consultant

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a 6-year-old resident of Dane County who receives MA.
2. Petitioner is diagnosed with autism. She receives intensive in-home autism treatment 25-30 hours per week through IDS, Inc.
3. On October 9, 2013, Dean Rehabilitation requested bi-weekly OT for 26 weeks, PA no. [REDACTED]. The DHCAA requested more information concerning goals and how they would help petitioner become more functional. In addition the DHCAA questioned whether there was coordination with IDS, Inc. When the provider responded, however, the goals were for general

“improvement” of visual/perceptual and motor skills and did not differentiate from the IDS services.

4. By a letter dated November 11, 2013, the DHCAA denied the request.

### DISCUSSION

OT is covered by MA under Wis. Admin. Code, §DHS 107.17. Generally OT is covered without need for prior authorization for 35 treatment days, per spell of illness. Wis. Admin. Code, §DHS 107.17(2)(b). After that, prior authorization for additional treatment is necessary. If prior authorization is requested, it is the provider’s responsibility to justify the need for the service. Wis. Admin. Code, §DHS 107.02(3)(d)6. If the person receives therapy in school or from another private therapist, there must be documentation of why the additional therapy is needed and coordination between the therapists. Prior Authorization Guidelines, Physical, Occupational, and Speech Therapy, Topics 2781 and 2784.

In reviewing a PA request the DHCAA 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 101.03(96m) defines medical necessity in the following pertinent provisions:

“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; ...
  3. Is appropriate with regard to generally accepted standards of medical practice; ...
  6. Is not duplicative with respect to other services being provided to the recipient;
  8. ...[I]s 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 DHCAA denied the request primarily because the evaluation did not show the medical need for the services. In fact, over my years of conducting hearings involving therapy services, I have found the Department to be extremely wary of requests that say that the parent is seeking additional or more services than the child is already receiving, as opposed to requests resulting from referrals from other providers. That appears to be the case here. The services were not requested because of a stated professional need for the services, but because the parent sought additional services.

As noted, the goals stated in the request are not functional goals, but much harder to substantiate goals of improving perceptible skills and motor skills. Of course an autistic child would benefit from more services that would improve general skills, but the MA program covers necessary services that would improve specific areas of functioning.

Petitioner essentially raised two arguments on appeal. First, she pointed out that IDS does not have an occupational therapist on staff. Nevertheless, IDS is providing intensive, at-home services working with petitioner’s daily living and motor skills. Nothing in the prior authorization request shows that the private OT would be working on a different set of or more specific skills.

Second, petitioner argues that if she were still in school (petitioner is home-schooled at present) she would be getting OT paid for by MA. As pointed out in Ms. Chucka's second response letter date January 21, 2014, that is not necessarily the case. MA will pay for school-based OT if the services would meet MA criteria for coverage and the school has an agreement with the MA program. If the services do not meet MA criteria, the school still can provide them through school funding rather than MA funding. Therefore, even if petitioner's Individualized Education Program called for OT, it does not follow that MA would cover the school OT.

As I stated in a prior decision for this petitioner concerning speech therapy, the denial does not mean that petitioner can never receive OT. OT can be granted if the provider shows they are necessary under the MA program guidelines.

### **CONCLUSIONS OF LAW**

The OT provider has not shown the medical necessity for services in the October 9, 2013 request.

**THEREFORE, it is**

**ORDERED**

That 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 4th day of February, 2014

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\sBrian C. Schneider  
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 4, 2014.

Division of Health Care Access and Accountability