



FH

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

In the Matter of

██████████ ██████████
c/o ██████████ and ██████████ ██████████
██████████
██████████

DECISION

MPA/153965

PRELIMINARY RECITALS

Pursuant to a petition filed December 09, 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 February 03, 2014, at Wausau, Wisconsin.

The issue for determination is whether the Department erred in its denial of the request for prior authorization for speech and language therapy (SLT) set forth in PA # ██████████.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████ ██████████
c/o ██████████ and ██████████ ██████████
██████████
██████████

Respondent:

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

By: Theresa Walske, MS, CCC-SLP (in writing)
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Marathon County. He has a diagnosis of cerebral palsy.
2. Petitioner receives SLT through his IEP at his public school.

3. Petitioner's provider submitted a request for prior authorization for 26 sessions of SLT.
4. The Department denied the request.
5. Petitioner appealed.

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 she qualified for the requested continued speech and language services.

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. 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.

Wis. Admin. Code § DHS 101.03(96m). It is also notable that the ForwardHealth program is a public benefit program that provides basic health care. It is not designed to provide the ideal or optimal health services that could benefit an individual.

The crux of the Division's denial of petitioner's request is that the petitioner has not established that private speech therapy is medically necessary. Specifically, the Department argues: 1) that the school-based therapy is sufficient; 2) that the PA did not meet legal standards for approval; and, 3) that the PA did not meet the definition of "medically necessary."

First, as for the basis stated in 2. above, that the PA does not meet the legal standards, I am not sure why the Department included this in its written argument. This specific argument, set forth on pages 6 and 7 of ex. #1 is not fleshed out at all and is merely conclusory. It seems to only be referring to a lack of medical necessity being demonstrated which is addressed elsewhere in the Department's letter. The argument lacks substance and will not be addressed as it is vague and not supported.

The more compelling argument made by the Department is that petitioner already receives services in school and there is no support for the medical need for additional private services. The Department notes that petitioner's IEP sets out the same goals as the private therapy provider. The Department also objected to the private services on the basis that cost-effectiveness has not been supported.

At hearing, petitioner's father provided testimony. But, there was not testimony from the private SLT provider. Such testimony may have benefitted petitioner as that provider may have been able to explain why the Department position was flawed. Petitioner's father explained that petitioner still does not have the speech and language skills that would be expected of a child of petitioner's age. But, petitioner's father was unspecific about how the private services will be different that the school services, or why they are medically necessary. The argument presented was merely that petitioner has delays and more services must be better.

I fully understand that petitioner suffers delays. That is not the question. But, the mere fact that additional services may benefit petitioner does not establish that such services are medically necessary or cost-effective. More relevant testimony may have been provided by the therapist if she had appeared. Petitioner may want to consider that if there is another denied PA in the future.

CONCLUSIONS OF LAW

The Department did not err in denying the request for prior authorization.

THEREFORE, it is

ORDERED

That this matter 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 26th day of February, 2014

\sJohn P. Tedesco
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 26, 2014.

Division of Health Care Access and Accountability