



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

In the Matter of

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

DECISION

MPA/153969

PRELIMINARY RECITALS

Pursuant to a petition filed December 06, 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 January 07, 2014, at Waukesha, Wisconsin.

The issue for determination is whether the Department of Health Services, Division of Health Care Access and Accountability (DHS) correctly denied Petitioner's request for prior authorization of Speech Language Pathology 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: OIG by letter

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

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Waukesha County.

2. Petitioner is a nine year-old child with diagnoses of Attention Deficit Hyperactivity Disorder, Anxiety Disorder and Autism Spectrum Disorder associated with a genetic condition. As a result, Petitioner suffers from severe speech apraxia. (Exhibit 2 - Letter from Dr. Rosa Kim and a January 3, 2014 Speech – Language Assessment from Children’s Hospital)
3. Petitioner uses an i-Pad with Proloquo2Go software to communicate, although he is less willing to use it at home. (Id.)
4. Petitioner receives two 25 minute sessions of Speech therapy at school. The goal of the school IEP states, “Given visual supports, rehearsed routines and appropriate communication tools demonstrate increased language skills by achieving 2 of 3 benchmarks listed below on 3 of 5 days...

Will Describe 3 details about an experience he has had.

Will ask a question about something he needs or something he wants to know.

Will engage in a reciprocal scripted conversational interaction consisting of at least 2 exchanges.

(Exhibit 3 - letter from Susan Kowalski; 2013-2014 IEP)

5. On August 2, 2013, HealthReach Rehabilitation submitted a request for prior authorization of 24 sessions of speech language therapy over 26 weeks at a cost of \$2,160.00. (Exhibit 5)
6. The prior authorization request submitted by Health Reach Rehabilitation states, “The member is currently receiving speech therapy services through the school system. His mother reported he receives between 15 and 30 minutes of speech therapy per week.” (Exhibit 5)
7. The short term goals of the requested services were stated as:
 - a. Follow 3-step commands with minimal cues in 60% of opportunities
 - b. Answer yes/no questions with head nod or head shake in 80% of opportunities
 - c. Identify body parts (i.e. nose, ears, eyes, hands) accurately in 80% of opportunities with minimal cues.
 - d. Use simple signs independently 5 times during treatment session with minimal cues.
 - e. Imitate simple signs 10 times during treatment session.
 - f. Imitate animal noises 5 times during treatment session.
 - g. Produce /b/ and /m/ phonemes at sound/syllable level with moderate cueing/model

(Exhibit 5)

8. On October 25, 2013, DHS sent the Petitioner a letter indicating that the requested services was denied. On October 25, 2013, DHS also sent Health Reach Rehabilitation notice of the same. (Exhibit 5)
9. The Petitioner’s parent, on Petitioner’s behalf, filed a request for fair hearing that was received by the Division of Hearings and Appeals on December 6, 2013. (Exhibit 1)

DISCUSSION

The Department of Health Services sometimes requires prior authorization to:

1. Safeguard against unnecessary or inappropriate care and services;
2. Safeguard against excess payments;

3. Assess the quality and timeliness of services;
4. Determine if less expensive alternative care, services or supplies are usable;
5. Promote the most effective and appropriate use of available services and facilities; and
6. Curtail misutilization practices of providers and recipients.

Wis. Admin. Code § DHS107.02(3)(b)

Speech and language therapy is a Medicaid covered service, subject to prior authorization after the first 35 treatment days. Wis. Admin. Code, § DHS107.18(2).

“In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including Medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.”

Wis. Admin. Code §DHS107.02(3)(e)

“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. DHS 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.

Petitioner has the burden to prove, by a preponderance of the credible evidence, that the requested level of therapy meets the approval criteria.

It is the position of the Department of Health Services (DHS) that the prior authorization request for speech language services was appropriately denied because 1) Health Reach Rehabilitation did not submit sufficient documentation showing the medical necessity for such services and 2) Health Reach Rehabilitation did not adequately coordinate care with Petitioner's school-based therapists.

MEDICAL NECESSITY

It is the position of the Department of Health Services that the record does not support a need for speech language services, because Petitioner's current short term goals are substantially the same as the short term goals of therapy submitted in June 2010. (See Exhibit 4) DHS argues that because the goals are the same the Petitioner's abilities have remained the same/not regressed and as such, he does not need therapy.

However, Petitioner's mother testified that the Petitioner has not had private speech language therapy since 2011. If over the last two to three years, school-based services were sufficient, one would think that Petitioner's abilities would have progressed and that he would now have different goals of therapy. As such, the existence of the same goals more strongly supports the conclusion that there has been some regression or at the very least, inadequate/ineffective services in the last two to three years since private therapy ended.

It should be noted that a January 3, 2014, Speech Language Pathology Assessment by Children's Hospital of Wisconsin, indicated that the Petitioner would, "benefit from consistently facilitated communication approaches across multiple environments with multiple communication partners. [The Petitioner] has not carried over the progress in functional communication skills within therapy to a variety of partners or environments. This needs to be directly targeted with substantial opportunities for repetition and practice with the facilitation of a licensed speech-language pathologist." (Exhibit 2 pg. 4) The evaluation goes on to state that because Petitioner's mother is excluded from school-based therapy, clinic based therapy is necessary to help the Petitioner carry over communication skills into other environments and to help Petitioner's mother assist the Petitioner in transferring communication skills into his daily environment. (Id at pg. 5) The evaluation recommend continued, "out-patient speech therapy with focus on function communication in the home by continuing parent training and education." (Exhibit 2, pg. 6)

Based upon the foregoing, it is found that Petitioner does, in fact, need some level of private speech therapy services in addition to school-based services to address his speech/language deficits. However, approval of the prior authorization request is also contingent upon adequate coordination of care.

COORDINATION OF CARE

One of the reasons DHS denied Petitioner's request for speech language services is because the prior authorization request submitted by Health Reach Rehabilitation failed to show the required coordination of care with the Petitioner's school-based services.

The on-line provider handbook located at <https://www.forwardhealth.wi.gov/WIPortal> contains guidelines for obtaining prior authorization of services. Guidelines for speech language therapy are found under the category Therapies: Physical, Occupational & Speech Language Pathology.

Topics 2781 and 2784 are found under the subheadings of Provider Enrollment & On-going Responsibilities/Communication/Requirements.

Topic 2781 states:

BadgerCare Plus PT, OT, and SLP providers are required to communicate with other providers as frequently as necessary to do the following:

- Avoid duplication of services.
- Ensure service coordination.
- Facilitate continuity of care.

Topic #2784 states that physical therapy, occupational therapy and speech language pathology providers, along with school-based service providers, are required to communicate with each other at least once a year. School based providers are required to cooperate with physical therapy, occupational therapy and speech language pathology providers who request copies of the child's IEP or components of the IEP team evaluation. *Online Provider Handbook, Topic # 2784*

Section IV, paragraph 16 of the Prior Authorization Request submitted by Health Reach Rehabilitation asks for documentation of how therapy with other providers has been coordinated. It appears that Health Reach Rehabilitation did not speak directly with Petitioner's school-based speech language pathologist (SLP) and relied upon Petitioner's mother reporting the receipt of 15-30 minutes of services per week. This is noteworthy, because the documentation from Petitioner's school-based SLP indicates Petitioner actually receives 50 minutes of therapy a week, in two, 25 minute sessions. (Exhibit 3)

Given the misinformation that Health Reach Rehabilitation had regarding Petitioner's school-based services, one can only conclude that there has not been the required communication/coordination of care between the therapist at Health Reach Rehabilitation and Petitioner's school-based therapists. In the absence of adequate communication/coordination of care, Health Reach Rehabilitation cannot reasonably conclude that the requested level of services is appropriate in light of the school-based services that the Petitioner receives. Consequently, DHS appropriately denied the prior authorization request submitted by Health Reach Rehabilitation.

OTHER MATTERS

I note to the Petitioner and his parents that Petitioner's provider, HealthReach Rehabilitation, will not receive a copy of this Decision. Petitioner's parents might wish to share this with Health Reach Rehabilitation, so that it can submit a NEW prior authorization request, with the necessary information attached. If that request is denied, Petitioner's parents can file a new appeal.

CONCLUSIONS OF LAW

The Department of Health Services correctly denied Petitioner's request for prior authorization of speech/language services.

THEREFORE, it is

ORDERED

That the petition 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 13th day of February, 2014.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 13, 2014.

Division of Health Care Access and Accountability