



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

██████████  
c/o ██████████ & ██████████  
██████████  
██████████

DECISION

MPA/154344

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 18, 2013, under Wis. Stat., §49.45(5), to review a decision by the Division of Health Care Access and Accountability (DHCAA) to deny a Medical Assistance (MA) request for in-home mental health services, a hearing was held on February 18, 2014, by telephone.

The issue for determination is whether petitioner's record shows a diagnosis amenable to mental health treatment.

**PARTIES IN INTEREST:**

Petitioner:

██████████  
c/o ██████████ & ██████████  
██████████  
██████████

Respondent:

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

By: Written submission of Jo Ellen Crinion, RN

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a 4-year-old resident of Winnebago County who receives MA.
2. On October 31, 2013, Innovative Counseling requested prior authorization for 52 hours of intensive in-home mental health services by a certified psychotherapist, PA no. ██████████. By a letter dated November 20, 2013, the DHCAA denied the request.
3. In the request petitioner's diagnoses were listed as mood disorder and oppositional defiant disorder (ODD) with a provisional diagnosis of attention deficit hyperactivity disorder (ADHD). It was noted that autism spectrum had been ruled out in March, 2013. However, later in the

evaluation petitioner's Axis I diagnosis was changed from ODD to Disruptive Behavior Disorder along with ADHD and Mood Disorder.

4. The request also included an October, 2013 neuropsychological evaluation by Dr. [REDACTED] [REDACTED]. Dr. [REDACTED]'s diagnoses were ADHD, explosive behavior disorder by history, sensory modulation disorder, and Asperger's disorder or autism spectrum disorder.

### **DISCUSSION**

Intensive In-Home Mental Health Services are covered under HealthCheck MA rules under Wis. Admin. Code, §DHS 107.13(4). Services are described in the Department's on-line MA Provider Handbook, Topic 2391.

Federal law provides that mental health services are covered by MA only if they are rehabilitative services. 42 U.S.C. §1396d(a)(13). Habilitation services are not covered by MA; they are covered only under specific MA waiver programs. 42 U.S.C. §1396n(c)(4)(B). According to Ms. Crinion in the case summary letter, the federal government has advised that a person with a developmental disability cannot be "rehabilitated," but only "habilitated." See January 22, 2014 case summary, page 2. Therefore, it follows that MA cannot pay for mental health services for a child whose diagnosis is a developmental disability. Wis. Admin. Code, §DHS 107.03(5) excludes from MA coverage services considered to be ineffectual.

Autism and Asperger's are considered to be pervasive development disorders. See case summary, page 3. ADHD typically is treated less intensively than in-home psychotherapy. *Id.* Explosive behavior disorder was never documented in the past, so the "by history" notation is unclear.

As noted in the case summary, the problem with this PA request is that petitioner's diagnoses are unclear, and the Department is hesitant to grant expensive services that may or may not address the person's impairments. The requesting provider, a psychotherapist, noted no autism or Asperger's, but the neuropsychologist noted that diagnosis *in the most recent evaluation*. With that history before the DHCAA, the denial of the request was understandable.

The denial is not a lifetime one. If better diagnoses can be put together showing a need for psychotherapy, a new PA request can be filed.

### **CONCLUSIONS OF LAW**

The PA request did not show a consistent diagnosis that would advance the effectiveness of in-home mental health treatment.

**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 25th 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 25, 2014.

Division of Health Care Access and Accountability