



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION

MPA/155380

PRELIMINARY RECITALS

Pursuant to a petition filed February 06, 2014, 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 March 20, 2014, at Waukesha, Wisconsin.

The issue for determination is whether the agency properly denied the Petitioner's PA request for an evaluation of speech and language therapy 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: Theresa Walske

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

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Waukesha County. She is five years old and lives at home with her family.

2. Petitioner attends the School District of Menomonee Falls. She receives specialized instruction in regular 4 year old kindergarten, occupational therapy and physical therapy. An IEP was submitted with the PA request. She does not receive speech therapy services at school.
3. The Petitioner received speech therapy from June 11, 2012 – July 29, 2013 at KidReach. She was discharged in July, 2013 because she had met her long term goal.
4. On August 7, 2013, the Petitioner was seen at the Genetic Clinic at Children’s Hospital of Wisconsin. A report of the assessment dated August 9, 2013 notes that the Petitioner has a chromosome abnormality involving a duplication on chromosome 15. It states that characteristics for duplications like the Petitioner’s include neurobehavioral disorders, hypotonia, cognitive deficit, language delay and seizures. It reports that “management for this syndrome includes a comprehensive neurological and developmental evaluation. Developmental evaluations allow planning for early physical, occupational, and speech intervention.”
5. On August 29, 2013, the Petitioner was evaluated at Children’s Hospital of Wisconsin by Dr. Zvara. Her report indicates that the Petitioner has poor muscle coordination related to her condition that results in poor handwriting skills, decreased age-appropriate abilities in bilateral play skills and ADLs. It notes she has made improvements in occupational therapy but continues to have several goals to make her more independent. Dr. Zvara states that she fears the Petitioner will have regression of skills if therapy is not authorized.
6. On November 13, 2013, the Petitioner was evaluated by HealthReach Rehab. Her speech and language skills were found to be age appropriate.
7. On November 13, 2013, a PA request was submitted on behalf of the Petitioner requesting payment of the evaluation.
8. On December 26, 2013, the agency denied the PA request.
9. On February 6, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

Speech and language therapy is an 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 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.

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 burden to demonstrate that she qualifies for the requested speech evaluation services.

The agency appeared via a written summary dated February 17, 2014 in which the agency explained the bases for its denial of the PA request. The agency argues that the evaluation did not meet the definition of medical necessity in Wis. Admin. Code § DHS 101.03(96m). A service is “medically necessary” when it 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 prevention, diagnosis or treatment of the recipient's illness, injury or disability; . . .
3. Is appropriate with regard to generally accepted standards of medical practice.

. . .

Wis. Admin. Code § DHS 101.03(96m).

The agency asserts that there is no documentation of a change in the Petitioner's condition since she was discharged from therapy in July, 2013 upon meeting her goals. It notes that school professional did not document any concerns regarding the Petitioner's communication abilities. There is no documentation of the therapist contacting the school to determine if there were any concerns regarding the Petitioner's communication abilities. The agency argues that, in this case, a screening could have been performed which would have provided the same conclusion as an evaluation.

The Petitioner was represented at the hearing by her mother. The Petitioner's mother conceded that there was no change in the Petitioner's medical condition. She asserts that there was a change in the Petitioner's circumstances, specifically she transitioned in the fall to a regular 4K classroom with more children and less 1:1 interaction with the teacher. She testified that the teachers at school did notice some communication issues but they would have had to re-open the IEP. The Petitioner's mother noted that while the Petitioner was not receiving speech therapy through the IEP, she did receive some group therapy. She argued that the speech therapist does not do screenings and an evaluation was necessary to make sure the Petitioner was not regressing with her skills. The Petitioner's mother referred specifically to the letter from CHOW dated August 9, 2013 which indicates that children with the Petitioner's condition are characterized by language delays and that developmental evaluations allow planning for speech intervention.

Based on the evidence, I conclude that the Petitioner has not met her burden of demonstrating that the evaluation was medically necessary. Insufficient documentation was presented to conclude that Petitioner had any issues that would necessitate an evaluation rather than a screening. It is not clear from the evidence why the speech therapist could not do a screening. While children with the Petitioner's condition are characterized by language delays, the Petitioner had recently received therapy and had met her goals. Without more documentation of any particular communication issues at the time of the evaluation, I cannot conclude that it was medically necessary.

CONCLUSIONS OF LAW

The agency properly denied the PA request for a speech and language evaluation.

THEREFORE, it is

ORDERED

That the Petitioner's appeal 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 22nd day of April, 2014

\sDebra Bursinger
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 April 22, 2014.

Division of Health Care Access and Accountability