



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

DECISION

MPA/155562

PRELIMINARY RECITALS

Pursuant to a petition filed February 13, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Office of the Inspector General (OIG) in regard to Medical Assistance, a telephonic hearing was held on May 14, 2014, at Stevens Point, Wisconsin.

The petitioner's mother, [Redacted] [Redacted], represented 9 year old [Redacted] [Redacted] at that hearing. Petitioner's private OT, [Redacted] [Redacted], also appeared and testified during that hearing. During that hearing, petitioner's representative requested that the record be held open for documents to be submitted to the Division of Hearings and Appeals, and then for those documents to be sent to the Office of the Inspector General (OIG) for a reconsideration decision with an opportunity for a reply by Ms. [Redacted]

This Administrative Law Judge (ALJ) sent a June 5, 2014 cover letter to Ms. Chucka at the Office of the Inspector General (OIG) with a copy of the one document which was received at DHA: a May 28, 2014 letter from [Redacted] occupational therapist, [Redacted] [Redacted]. In that same letter, this ALJ requested that Ms. Chucka review the enclosed copy of letter, and submit a reconsideration summary to me at the Division of Hearings and Appeals (DHA) by June 20, 2014 with a copy of that reconsideration summary letter to be sent to the petitioner's representative, [Redacted] [Redacted]. The petitioner's representative requested and was granted until June 30, 2014 to submit to DHA her written response to Ms. Chucka's reconsideration summary.

Ms. Chucka timely submitted to DHA and to Ms. [Redacted] her June 13, 2014 reconsideration summary. Ms. [Redacted] failed to submit any response to DHA by June 30, 2014 or even by the date of this decision.

The issue for determination is whether the Department correctly denied the petitioner's November, 2013 prior authorization (PA) request for occupational therapy (OT) services based upon petitioner's provider's failure to establish the medical necessity of the requested OT services.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
[Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

Representative:

[Redacted] [Redacted], mother
[Redacted]
[Redacted]

Respondent:

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

By: Mary Chucka, occupational therapy consultant  
Office of the Inspector General (OIG)  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:  
Gary M. Wolkstein  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a 9 year old resident of Portage County who resides at home with his family. Petitioner is certified for MA benefits.
2. The petitioner has received MA approval for occupational therapy services through the provider, [REDACTED] LLC, from October 12, 2009 through September 3, 2013.
3. The petitioner is diagnosed with Developmental Delay, unspecified.
4. As of the fall of 2013, petitioner was a second grade student in the Stevens Point Public School District where he receives special education services. He receives occupational therapy services on an "as needed" (PRN basis) according to his Individual Educational Plan (IEP). The petitioner received OT services from his former school in the [REDACTED] School District, but those OT services ended during April, 2013. The petitioner and the provider did not submit a copy of that school's OT discharge summary regarding the petitioner.
5. On or about November 11, 2013, the occupational therapy provider, [REDACTED] LCC requested prior authorization (PA) on behalf of the petitioner for MA coverage of individual private occupational therapy services from the Office of the Inspector General (OIG) at the frequency of once weekly for 26 weeks with a requested start date of November 11, 2013, at a total requested charge of \$2,970.00. See Exhibit 2.
6. On or about June 28, 2013 the Office of the Inspector General (OIG) sent a notice to the petitioner denying the prior authorization request for individual occupational therapy because the submitted documentation did not establish the medical necessity of the requested private OT services, and the provider did not provide specific quantitative or qualitative documentation showing occupational therapy progress in any ADLs as a result of past OT services to petitioner during periods since October, 2009. See Exhibit 1.
7. The record was held open for the following: a) petitioner to submit new evidence to DHA; b) for OIG to review that new evidence and submit a reconsideration summary to DHA and petitioner's representative; and c) for petitioner's representative to submit a reply to that reconsideration to DHA regarding the medical necessity of the requested occupational therapy services as of November, 2013. See above Preliminary Recitals.
8. After reviewing the petitioner's submissions, Department OT consultant, Mary Chucka, issued a June 13, 2014 reconsideration summary to DHA and the petitioner's representative. In that reconsideration, OIG continued to deny the requested occupational therapy based upon lack of established medical necessity due to the following factors: 1) the provider did not submit any

explanation as to why petitioner's school OT ended during April, 2013, or why his OT is now being provided by the Steven Point School on a 'PRN' basis. Without knowing the basis of the petitioner's "discharge" from school OT services, the medical record regarding petitioner's need for private OT is incomplete; b) the OT provider has not submitted any clinical information at a level of detail that supports its alleged improvement in petitioner's OT skills based upon the services by the provider; c) the provider has not quantified or qualified the petitioner's limitations or deficits, and the alleged improvement that petitioner has made in his OT skills from past OT therapies. The record must be supported by units of objective measurement reported consistently as part of the therapist's responsibility to prepare and maintain adequate clinical records; and d) the provider failed to establish with sufficient, reliable medical evidence that the skills of a private occupational therapist are needed for petitioner.

9. The petitioner's representative did not submit to DHA any response to the Department's reconsideration, as summarized in Finding of Fact #8 above. See Preliminary Recitals above.

### DISCUSSION

Occupational therapy (OT) is an MA-covered service, subject to prior authorization after the first 35 treatment days per spell of illness. Wis. Admin. Code §DHS 107.17(1),(2). In determining whether to approve OT services, the Division must consider the generic prior authorization review criteria listed at Wis. Admin. Code §DHS 107.02(3)(e). Those criteria include the requirement that the requested service be **medically necessary**, and that it not duplicate other available services. *Ibid.* To be medically necessary, a service must be required to treat a recipient's illness or disability. See Wis. Admin. Code §DHS 101.03(96m). OT can certainly be an appropriate service for dealing with the motor skills deficits that often accompany the petitioner's diagnosis. See *Prior Authorization Guidelines Manual*, 112.001.

In reviewing a PA request the respondent 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 respondent denied the PA request because the Consultant could not determine the medical necessity of the requested services. The Department, in a comprehensive 10 page analysis of petitioner's provider's PA request, complained that the evaluation did not provide sufficient objective measurements of the functional deficits and thus whether the requested services could address the deficits. See Exhibit 1.

A prior decision of the Division of Hearings and Appeals aptly states what is required of a provider in seeking an approvable PA Request:

An effective proposal for ... therapy must follow a several step process. It must first determine the nature of the recipient's disability and the limitations that that disability imposes upon him. Second, it must set goals to help the recipient live with the disability. Third, it must develop a treatment plan that has a realistic chance of accomplishing the goals. Finally, to determine whether the therapy meets these criteria, the provider must perform tests that consistently and accurately measure performance. If the therapy does not meet these criteria, it fails the medically necessary test because it is not consistent with the recipient's symptoms or with treatment of the recipient's disability.

See, DHA Case NO. MPA-55/53461 (Wis. Div. Hearings Appeals July 29, 2001)(DDHS), at pp. 2-3. The Department correctly takes the position that such baselines must be described with objective measurements. It has made that position clear to MA providers in Medicaid Update no. 2002-32, dated May, 2002.

The OIG denied the request for private OT services because petitioner did not establish the medical necessity, appropriateness and effectiveness of the OT services. 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. The mere assertion, even of a doctor or clinician, that a person needs a specific service *is not the same thing* as demonstrating with factual evidence the nature of the deformity, limitations, measurements of such deformities or limits, and clinical evidence that establishes such services are in fact medically necessary as that term is defined by the MA Program, and as applied to the specific services sought.

In this case, the OIG consultant denied the petitioner's PA request for the reasons explained in Findings of Fact #6 and #8 above. At the request of petitioner's representative (mother), the record was held open for documents to be sent to the Division of Hearings and Appeals (DHA), and then to be submitted to the OIG for a reconsideration decision. Ms. Chucka submitted a June 13, 2014 reconsideration to DHA and the petitioner's representative. In that reconsideration, OIG confirmed that after reviewing the petitioner's documents, it continued to assert that the petitioner's provider has not established the requested OT services were medically necessary and appropriate. Furthermore, petitioner's representative failed to submit to DHA any response to that reconsideration summary even by the date of this decision to refute OIG's reconsideration.

The burden of proof was upon the petitioner and his provider to establish the medical necessity of the requested OT services. The petitioner and his provider have not met that burden. While the hearing record is clear that [REDACTED] has serious medical and behavioral problems, the petitioner has not established with sufficient clinical evidence that the requested private, summer OT services are medically necessary or appropriate. Accordingly, the Department correctly denied the petitioner's November, 2013 prior authorization (PA) request for occupational therapy (OT) services based upon petitioner's provider's failure to establish the medical necessity and appropriateness of the requested OT services.

Nothing in this Decision shall prevent the petitioner for submitting a new Prior Authorization (with reliable, quantitative and qualitative evidence, for OT services. I note to the petitioner's mother that petitioner's provider will not receive a copy of this Decision; petitioner is strongly encouraged to share this decision and the Department's March 7, 2014 denial summary and June 13, 2014 reconsideration summary correspondence with his provider.

### **CONCLUSIONS OF LAW**

The Department correctly denied the petitioner's November, 2013 prior authorization (PA) request for occupational therapy (OT) services based upon petitioner's provider's failure to establish the medical necessity of the requested OT services.

**THEREFORE, it is**

**ORDERED**

The petition for review herein be and the same is hereby Dismissed.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 4th day of August, 2014

---

\sGary M. Wolkstein  
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](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on August 4, 2014.

Division of Health Care Access and Accountability