



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of:

[REDACTED]  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/155698

**PRELIMINARY RECITALS**

Pursuant to a petition filed February 20, 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 [“DCHAA”] in regard to Medical Assistance [“MA”], a Hearing was held via telephone on April 15, 2014.

The issue for determination is whether the DCHAA was correct to modify Prior Authorization [“PA”] for Speech and Language Therapy [“SLT”] for petitioner by approving 12 SLT sessions over 24 weeks instead of the 48 SLT sessions over 24 weeks that were requested.

There appeared at that time via telephone the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

Represented by:

[REDACTED], petitioner’s mother  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703  
By: Theresa Walske, MS, CCC-SLP  
Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**OTHER PERSON PRESENT:**

[REDACTED], Speech Therapist

ADMINISTRATIVE LAW JUDGE:  
 Sean P. Maloney  
 Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (6 years old) is a resident of Columbia County, Wisconsin.
2. On December 10, 2013 petitioner's provider, Divine Savior Healthcare of Portage, Wisconsin, requested PA for MA coverage of SLT at the rate of 2 times per week for 24 weeks for 60 minutes each time with a requested start of December 6, 2013 at a total cost of \$18,455.75 (P.A. # [REDACTED] dated December 10, 2013).
3. Of the 48 SLT sessions requested by petitioner's provider 24 were for procedure code 92507 which is treatment of speech, language, voice, communication, and/or auditory processing disorder (includes aural rehabilitation); the other 24 SLT sessions were for procedure code 92526 which is evaluation of oral and pharyngeal swallowing function.
4. On January 14, 2014 DCHAA modified petitioner's PA request for SLT by approving 12 SLT sessions over 24 weeks instead of the 48 SLT sessions over 24 weeks that were requested; the 12 SLT session approved were all for procedure code 92507; DCHAA sent a letter to petitioner dated January 13, 2014 and entitled *BadgerCare Plus Notice of Appeal Rights* informing him of the modification.
5. Petitioner's provided submitted a *Prior Authorization Amendment Request* dated January 27, 2014 requesting DCHAA to reconsider the modification; DCHAA reviewed the request but made no changes; DCHAA sent a letter to petitioner dated January 30, 2014 and entitled *BadgerCare Plus Notice of Appeal Rights* affirming the modification.
6. Petitioner has diagnosis of developmental delays and Pervasive Developmental Disorder -- Not Otherwise Specified ["PDD-NOS"]; he has significant expressive/receptive language disorder, food aversion (refuses fruits, vegetables, sandwiches, meats and will go on odd jags food months at a time), and mild oral dysphagia; he lives at home and is home-schooled.
7. An insufficient baseline of petitioner's language skills has been established.
8. Petitioner consumes 100% of his hydration and food orally; no structural or neuromuscular etiology has been reported; there are no concerns for pharyngeal dysphagia or aspiration.

### DISCUSSION

By law, MA pays only for medically necessary and appropriate health care services when provided to currently eligible MA recipients. Wis. Admin. Code §§ DHS 107.01(1) & 107.17(1) (February 2014); See also, Wis. Stat. §§ 49.46(2) & 49.47(6)(a) (2011-12). In order for a service to be *medically necessary* it must meet several specific requirements. See, Wis. Admin. Code § DHS 101.03(96m) (December 2008). As with any eligibility denial, the burden is on petitioner to show that he is eligible for the requested services. *Lavine v. Milne*, 424 U.S. 577, 583-584 (1976). Petitioner has failed to do so.

One of the requirements for *medical necessity* is that the service must be 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)(b)9. (December 2008). Baselines are required in order to access effectiveness. Reasons for limited performance must be identified, targeted, and objectively measured so that a baseline of abilities

and limitations can be established at the initiation of treatment to which results of treatment can later be compared. Baselines enable progress toward a goal to be measured. If no starting point is known, it is not possible to know how far a person has progressed (or regressed). Further, baselines are necessary to determine if the stated goals of the requested therapy are necessary and realistic. If the baseline for a goal is high the goal may not be necessary, if it is low the goal may not be realistic. DCHAA denied PA in this case, in part, because all necessary baselines had not been established.

Baselines must use units of objective measurement that can be consistently applied when reporting subsequent status. Baselines must be specific, measureable, and objective. Words such as better, improved, calmer, happier, pleasant, less/more, not as good, not as reliable, longer, more prolonged, and goal not met are not specific, measureable, and objective. *ForwardHealth: Prior Authorization / Therapy Attachment (PA/TA) Completion Instructions*, [F-11008A (07/12)], pp. 4-5; Exhibit #4

In regard to procedure code 92507 an insufficient baseline of petitioner's language skills has been established. Petitioner's language skills were not formally tested until December 2013 and at that time only a test of his receptive language skills was completed. Although petitioner does have a significant expressive/receptive language disorder SLT cannot be approved as requested in the absence of a baseline.<sup>1</sup> Petitioner received SLT from April 2013 to December 2013.<sup>2</sup> It is not understood why a baseline was not established at that time.

In letter dated April 11, 2014 petitioner's SLT provider asserts that baselines for expressive language do exist -- but documentation to support this assertion is not found. Documentation is required. Wis. Admin. Code § DHS 106.02(9)1. (January 2014); and, §§ DHS 107.02(2)(e), (f) & (g) (February 2014). Further, the limited baseline information that is in the record of this matter is couched only in percentages (80%; 70%) without raw data (i.e. 8 out of 10 times; 7 out of 10 times).

Another one of the requirements for *medical necessity* is that the service must be required to prevent, identify, or treat a recipient's illness, injury, or disability. Wis. Admin. Code § DHS 101.03(96m)(a) (December 2008). In regard to procedure code 92526 there has been no showing that SLT meets this standard of *medical necessity*. In particular, procedure code 92526 requires that a member must have an identified and documented physiological swallowing and/or feeding problem. *Forward Health Therapy Handbook*, Topic # 2794. Petitioner consumes 100% of his hydration and food orally, no structural or neuromuscular etiology has been reported, and there are no concerns for pharyngeal dysphagia or aspiration.

It is true that petitioner has food aversion (refuses fruits, vegetables, sandwiches, meats and will go on odd jags food months at a time) and mild oral dysphagia. However, there has been no showing of what the underlying causal mechanisms are and if they can be successfully treated by SLT. In letter dated April 11, 2014 petitioner's SLT provider asserts that petitioner is "unable to regulate multisensory input that is required for eating" and that "the whole sensory deficit is a physiological problem." As above, documentation to support this assertion is not found. Documentation is required. Wis. Admin. Code § DHS 106.02(9)1. (January 2014); and, §§ DHS 107.02(2)(e), (f) & (g) (February 2014). Petitioner's SLT provider did submit information from the internet about *Sensory Processing Disorder* in general (not specific to petitioner) -- but even that information does not conclude that sensory deficit is a physiological problem. It merely states: "Studies suggest that children with SPD-SOR have different neurophysiological (i.e. brain) responses . . . "; and, "Studies suggest that boys with SPD have decreased white matter connectivity . . . "

<sup>1</sup> DCHAA approved 12 sessions "to continue to support [petitioner] and his family with information and guidance of how to foster development of communication in [petitioner's] daily life and home school activities. DCHAA states that these 12 session can be used flexibly as needed; i.e., not necessarily at the frequency of 1 time per week.

<sup>2</sup> Although the main focus of that treatment was reported to be on feeding.

It is noted that petitioner submitted a letter dated April 9, 2014 from a Dean Clinic Ph.D. neuropsychologist. In that letter the neuropsychologist acknowledges that DCHAA's modification of PA # [REDACTED] "clearly seemed to meet the letter of the law." He also states that petitioner's for therapy is not due to a physiological malfunction.

Petitioner may, at any time, file a new PA request with additional documentation and evidence.

Finally, in his request for a Hearing dated February 19, 2014 petitioner objects to the *BadgerCare Plus Notice of Appeal Rights* letters he received because "[t]hey did not tell me how the PA request had been modified." However, the DCHHA's letter dated February 27, 2014 contained complete and detailed information about how and why the PA was modified.

It is not necessary to consider the other reasons that DCHA modified PA # [REDACTED].

### CONCLUSIONS OF LAW

For the reason discussed above, DCHAA was correct to modify PA SLT for petitioner by approving 12 SLT sessions over 24 weeks instead of the 48 SLT sessions over 24 weeks that were requested.

**THEREFORE, it is**

### ORDERED

That 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 6th day of May, 2014

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\sSean P. Maloney  
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 May 6, 2014.

Division of Health Care Access and Accountability