



FH

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

In the Matter of

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

DECISION

MPA/155718

PRELIMINARY RECITALS

Pursuant to a petition filed February 25, 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 New Richmond, Wisconsin.

The issue for determination is whether the petitioner is entitled to medical assistance reimbursement for more than four sessions of physical ██████████ in a six-month period.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Respondent:

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

By: Pamela Hoffman

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

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of ██████████ ██████████ County.

2. On November 26, 2013, the petitioner with [REDACTED], [REDACTED], [REDACTED], requested 26 weekly physical therapy sessions at a cost of \$3,639. [REDACTED] finished submitting its documentation on December 27, 2013. On January 4, 2014, the Office of Inspector General modified the request to allow four sessions between November 11, 2013, and July 4, 2014.
3. The petitioner is a three-year-old girl diagnosed with lack of coordination and Prader-Willi Syndrome. She has shown characteristics of Down Syndrome.
4. The petitioner's school district has provided her with an individualized education program that includes 30 minutes of physical therapy per six-day cycle..
5. The petitioner has a jungle gym in her yard. She can climb the ladder with little stand-by assistance, but cannot descend the ladder.
6. The petitioner can walk about two to three blocks before needing to be put in a stroller.
7. The petitioner has some instability when walking fast or running up and down moderate inclines and hills. She can walk on uneven surfaces, stand from the floor without turning her body more than 20 degrees, walk sideways about four steps, "tall kneel" for about five seconds, walk backwards about five steps, run on flat surfaces, walk up and down stairs using a railing, and throw a ball overhand about two or three feet. She cannot jump forward or up, stand on one foot, negotiate stairs alternating her foot pattern, or throw a ball underhand.
8. [REDACTED] set the following goals for the petitioner:
 - a. [She] will run on uneven surfaces and up and down moderate inclines and not fall more than is typical of her age.
 - b. [She] will walk up and down at least 4 stairs in an alternating patten with the rail.
 - c. [She] will demonstrate going up onto her tip toes when reaching for objects.
 - d. [She] will consistently demonstrate arms at her sides when walking or running a level and unlevel surfaces to increase her stability and safety.
9. [REDACTED]'s plan of care is the same for each of its goals:
 - a. Therapeutic exercises and strengthening activities
 - b. Balance and coordination activities
 - c. Aquatic therapy to increase strength, mobility and balance.

DISCUSSION

The petitioner, with [REDACTED], [REDACTED], [REDACTED], requested 26 weekly one-hour sessions of physical therapy. The Office of Inspector General modified the request, allowing four sessions over the 26 weeks. Medical assistance covers physical therapy if the recipient obtains prior authorization after the first 35 visits. Wis. Admin. Code § HFS 107.16(2)(b). In determining whether to approve therapy, the Division must consider the generic prior authorization review criteria listed at Wis. Admin. Code § HFS 107.02(3)(e). They include:

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;

Medically necessary” means a medical assistance service under ch. HFS 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. HFS 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.

Wis. Admin. Code, § DHS 101.03(96m).

The petitioner is a three-year-old girl. Her provider, ■■■■■■■■■■, ■■■■■■■■■■ (formerly ■■■■■■■■■■ ■■■■■■■■■■), lists her primary diagnosis as lack of coordination. She also has been diagnosed with Prader-Willi Syndrome, which is caused by a chromosome defect and is characterized by short stature, obesity, lack of coordination, excessive sleeping, and speech delays. She has some instability when walking fast or running up and down moderate inclines and hills. She cannot jump forward or up, stand on one foot, negotiate stairs alternating her foot pattern, or throw a ball underhand. She can walk on uneven surfaces, stand from the floor without turning her body more than 20 degrees, walk sideways about four steps, “tall kneel” for about five seconds, walk backwards about five steps, run on flat surfaces, walk up and down stairs using a railing, and throw a ball overhand about two or three feet. ■■■■■■■■■■ set the following goals for her:

1. [She] will run on uneven surfaces and up and down moderate inclines and not fall more than is typical of her age.
2. [She] will walk up and down at least 4 stairs in an alternating patten with the rail.
3. [She] will demonstrate going up onto her tip toes when reaching for objects.
4. [She] will consistently demonstrate arms at her sides when walking or running a level and unlevel surfaces to increase her stability and safety.

■■■■■■■■■■'s seeks to accomplish these goals with the following plan of care, which is the same for each of its goals:

1. Therapeutic exercises and strengthening activities
2. Balance and coordination activities
3. Aquatic therapy to increase strength, mobility and balance.

■■■■■■■■■■ has accurately identified the petitioner’s primary physical problems. Because those problems stem from her lack of coordination and strength, a plan of care focusing on activities that improve her strength, coordination, and balance is consistent with her symptoms. The question is whether the program is cost effective and appropriate.

The petitioner and her provider have the burden of proving by the preponderance of the credible evidence that the therapy is necessary. ■. ■■■■■ has expertise and specialized equipment, but its plan of care gives little insight into how this expertise or equipment will be used. There are numerous ways to improve the petitioner's strength and coordination, most of which can be done outside of ■. ■■■■■. At home, she can walk up stairs, walk on uneven surfaces, run, and do basic strengthening exercises. In addition, her home has a jungle gym, which when used contributes to strength and coordinating. At school, she is give some physical therapy and has a chance to run and play games, including kickball, with other children. Because ■. ■■■■■ did not provide any detail concerning its plan of care, there is no way to determine if its techniques will accomplish its goals better than the therapy and exercise the petitioner receives at home and at school.

Moreover, one does not gain coordination or strength by exercising once a week, the number of days a week that ■. ■■■■■ proposes to treat the petitioner. This means that to make gains, she will have to work on her strength and coordination at home and school. The Office of Inspector General has approved four of the physical therapy sessions requested by ■. ■■■■■ so that it can develop a home exercise program for her. This should be enough to allow it to properly instruct her on the proper techniques needed to improve her strength and coordination sufficiently to meet the goals set by ■. ■■■■■. Therefore, I find that the petitioner and ■. ■■■■■ have failed to prove that more therapy would be either cost effective or medically necessary. I uphold the Office of Inspector General's decision.

CONCLUSIONS OF LAW

The petitioner has not shown by the preponderance of the credible evidence that more than four sessions of physical therapy from ■. ■■■■■, ■■■■■, ■■■■■, over a six-month period is medically necessary.

THEREFORE, it is

ORDERED

The petitioner's appeal is 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 11th day of April, 2014

\sMichael D. O'Brien
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 11, 2014.

Division of Health Care Access and Accountability