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

In the Matter of

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

DECISION

MPA/155719

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 speech and language therapy.

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: 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:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

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

2. On November 11, 2013, the petitioner requested 26 weekly one-hour speech and language therapy sessions at a cost of \$1,768. The Office of Inspector General requested additional information on December 4, 2013, and denied the request on January 21, 2014.
3. The petitioner is a three-year-old girl diagnosed with a mixed receptive and expressive language disorder. As of October 2013, her auditory comprehension was in the 8th percentile, her expressive communication was in the 6th percentile, and her total language score was in the 6th percentile.
4. ■■■■■'s first primary goal for the petitioner is that within six months she will improve her expressive language skills commensurate with her age peers. It set the following subgoals for her:
 - a. [She] will attempt to imitate word approximations with tactile, visual, and physical prompts 15-20 times per treatment session.
 - b. [She] will utilize a SGD to require preferred activities 10x per session, given gestural prompts when needed.
 - c. [She] will reach targets with edibles on her lips, tongue, and cheeks with visuals 6x per treatment session.
5. ■■■■■/s second primary goal for the petitioner is that within six months she will improve her receptive language skills so that she can follow familiar directions within structured tasks. It set one subgoal within this area: "Given visual stimuli, [she] will point to objects or actions 5x per treatment session, given prompts as needed."
6. ■■■■■'s entire description of its plan of care for the petitioner is the following: "Speech language therapy."
7. The petitioner receives three hours of speech therapy per month from her school district. Her individualized education plan provides the following primary goal: "[She] will improve expressive language by moving FROM spontaneously using less than 25 words/signs to communicate TO spontaneously using at least 50-75 word/signs to request, comment, protest as measured by ongoing word lists and communication samples." It then listed six subgoals:
 - a. [She] will imitate noises, animal sounds, and age-appropriate speech sounds.
 - b. [She] will produce a variety of syllable shapes simultaneously with adults, in imitation, and spontaneously.
 - c. [She] will use a variety of word approximations and/or signs to label common household/school objects, animals, foods, clothing, and body parts.
 - d. [She] will approximate at least 10 different verbs and 10 different describing words.
 - e. [She] will answer yes/no, what, what doing questions.
 - f. [She] will attend to and utilize pictures/signs as needed to help her communicate.
8. ■■■■■ and the petitioner's school district have not submitted a written plan coordinating their services.

DISCUSSION

Medical assistance covers speech therapy, but recipients must obtain prior authorization after the first 35 visits. Wis. Admin. Code § DHS 107.18(2)(b). The petitioner, together with his provider, Courage Center ■■■■■, requested 26 weekly speech and therapy at a cost of \$1,768. The Office of Inspector General denied the request.

When determining whether a service is necessary, the Division must review, among other things, the medical necessity, appropriateness, and cost of the service; the extent to which less expensive alternative services are available; and whether the service is an effective and appropriate use of available services. Wis. Adm. Code, § DHS 107.02(3)(e)1.,2.,3.,6. and 7. "Medically necessary" means a medical assistance service under ch. HFS 107 that is "[r]equired to prevent, identify or treat a recipient's illness, injury or

disability;” and, among other things, is “not duplicative with respect to other services being provided to the recipient.” Wis. Adm. Code § DHS 101.03(96m)(a) and (b)6.

When determining whether the requested therapy duplicates therapy a person already receives, the Division of Hearings and appeals has generally looked at whether the goals and intended outcomes of the two providers are similar. It does not matter if the therapists use different techniques or if one uses individual and the other group therapy. There are limits to this type of analysis. There has to be some reasonable expectation that the original therapist can accomplish what that therapist is trying to accomplish. If the child’s needs are great, and the school’s therapy is insufficient to meet those needs, more intensive outside therapy may be necessary. Nor would one expect a discredited technique to accomplish the stated goals. But the petitioner and her provider have the burden of proving that any requested therapy is necessary. If, as is true here, the initial issue that must be resolved before any other issues are addressed is whether the requested therapy duplicates therapy the petitioner already receives, she and her provider must establish by the preponderance of the credible evidence that duplication does not occur.

Both the petitioner’s school district and █. █ have expressive language goals for the petitioner to imitate various sound and use simple words to develop language. █. █ also has a goal for the petitioner to “reach targets with edibles on her lips, tongue, and cheeks with visuals 6x per treatment session,” but this is a technique for developing verbal skills rather than a desired functional outcome. The desired functional outcome is still to produce comprehensible sounds and words. The petitioner has not shown that █. █’s techniques do this any more effectively than █. █’s do. █. █ does have a second major goal not written in the petitioner’s IEP. That goal involves developing the petitioner’s receptive language skills. However, as the Office of Inspector General points out, the nature of school attendance is that one must develop these skills.

Although the basic purpose of █. █ and the school’s therapy is similar, the petitioner could demonstrate that the two services do not duplicate each other by demonstrating that the school service is inadequate and by providing a written coordination plan that shows what areas each provider will concentrate on. There was no credible medical evidence that the school therapy was inadequate.

As for coordination, this is expected in all cases in which a person already receiving therapy requests additional therapy. The Department’s speech therapy guidelines specifically require that providers submit “[d]ocumentation of coordination of the therapy treatment plan with these other service providers,” including schools, before the request can be approved. *Prior Authorizations Guidelines Manual*, § 113.001.03. The Office of Inspector General requested evidence of coordination from █. █. █. █ responded as follows on January 6, 2014: “Currently, SLP [█. █] has yet to communicate with [Petitioner’s] school providers due to her not receiving services in outpatient clinic. Once outpatient services are initiated, SLP will coordinate and document communication with school providers.” This response is inadequate because neither the Office of Inspector General nor the Division of Hearings and Appeals has any way to determine whether the services will duplicate each other unless they receive the documentation before reviewing the request.

Based upon the entire record, I find that the petitioner and █. █ have failed to show by the preponderance of the credible evidence that the requested services do not duplicate those the petitioner already receives from her school district. Therefore, the Office’s denial of the petitioner’s request is upheld.

CONCLUSIONS OF LAW

The Office of Inspector General correctly denied the petitioner’s request for speech therapy because she has failed to establish by the preponderance of the credible evidence that the services she already receives from her school district will not duplicate the requested services.

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