FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]
c/o [redacted]
[redacted]
[redacted]

DECISION

[redacted]

PRELIMINARY RECITALS

Pursuant to a petition filed February 28, 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 telephonic hearing was held on April 28, 2014, at Appleton, Wisconsin.

The 14 year old petitioner was represented by her mother, [redacted] during and after the 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 (DHA), 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]. While the record was held open, Ms. [redacted] contacted DHA to obtain and was granted an extension until June 16, 2014 for petitioner's evidence to be sent to DHA.

This Administrative Law Judge (ALJ) sent a July 19, 2014 cover letter to Ms. [redacted] at the Office of the Inspector General (OIG) with a copy of the one and only document which was received at DHA on June 16, 2014: a four page June 12, 2014 letter by Ms. [redacted]. In that same letter, this ALJ requested that Ms. [redacted] review that enclosed letter, and submit a reconsideration summary to me at the Division of Hearings and Appeals by August 4, 2014 with a copy of that reconsideration summary letter to be sent to the petitioner's representative. The petitioner requested and was granted until August 14, 2014 to submit to DHA her response to Ms. [redacted]'s reconsideration summary.

Ms. [redacted] sent a July 30, 2014 five page, detailed reconsideration to DHA and Ms. [redacted] which is received into the hearing record. Ms. [redacted] did not submit to DHA any response to that OIG reconsideration

The issue for determination is whether the Department correctly denied the petitioner's January, 2014 prior authorization (PA) request for Child Adolescent Day Treatment (CADT), due to not cost effective and appropriate when less expensive and appropriate services were available to meet petitioner's medical needs.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[redacted]
c/o [redacted]
[redacted]
[redacted]

Representative:

[redacted], mother
[redacted]
[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Jo Ellen Crinion, RN consultant
Division of Health Care Access and Accountability
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 (CARES # [redacted]) is a 14 year old resident of Outagamie County.

2. Petitioner's mother and representative, [redacted], was unable to provide medical records from any of petitioner's various medical providers to submit to the division of Hearings and Appeals (DHA) for this appeal.

3. Petitioner was enrolled in a MA managed care organization (MCO), United HealthCare Community Plan, from September 12, 2012 through December 31, 2014. Petitioner's mother missed the deadline for MA re-enrollment in the MCO, and on January 3, 2014, petitioner was enrolled in fee-for-service from January 1, 2014 through January 31, 2014. Petitioner was re-enrolled in the MCO as of February 1, 2014.

4. The petitioner was referred for child adolescent day treatment (CADT) due to ongoing concerns related to [redacted]'s "anxiety, depression, isolation, socialization struggles, mood instability and family conflicts."

5. On January 9, 2014, the petitioner's CADT provider, Northwest Journey-Stevens Point, requested child adolescent day treatment services five hours a day, five days a week from January 1, 2014 for 13 weeks (to March 1, 2014) at a cost of $26,000. Northwest Journey did not submit all of the required prior authorization forms to OIG until January 21, 2014.

6. Northwest Journey Stevens Point provided CADT services for petitioner as of January 1, 2014.

7. Despite being aware that petitioner was fee-for-services as of January 1, 2014, the provider failed to submit a complete PA request with all required forms, documentation, recordkeeping and PA requirements until January 21, 2014.

8. Petitioner was admitted to St. Elizabeth's Hospital on January 9, 2014, and was discharged on January 13, 2014.

9. The petitioner is diagnosed with depressive and anxiety disorders, disruption of family by separation and educational problems (discord with classmates). She also has significant problems regarding suicidality.

10. The petitioner had the following history of mental health illness and treatment during the period of September, 2013 to June, 2014: a) September/October, 2013 – hospitalized on two separate occasions due to concerns about self-harm or suicidal ideation; b) November, 2013 – petitioner was hospitalized and day treatment was recommended – placed on waiting list for Northwest Journey in Stevens Point; c) December 28, 2013 - Northwest Journey received pre-authorization from insurance; d) January 9, 2014 – petitioner was admitted to St. Elizabeth's hospital due to an

overdose attempt; e) January 13, 2014 – petitioner was discharged from the hospital, and returned to CADT at Northwest Journey Stevens Point; f) March 4, 2014 – petitioner was hospitalized at Bellin Hospital; g) March 12, 2014 – petitioner was discharged from the hospital. "Intense treatment" was recommended and the petitioner was placed on a waiting list for Northwest's residential care center , Northwest Passages in Fredric, WI; and h) As of June 12, 2014, petitioner remains in a residential care center.

11. The petitioner receives the following medical, psychiatric and social worker services: a) weekly outpatient therapy with Dr. [redacted]; b) child psychiatrist, Dr. [redacted] provides treatment supervision and medication adjustments and changes for petitioner; c) weekly discussions with the school social worker, Ms. [redacted] ; and d) hospitalizations for mental health interventions (see above Finding of Fact #10).

12. The Department sent a January 21, 2014 notice to the petitioner denying the petitioner's PA request for CADT services due to other less expensive and appropriate services are available which may safely and effectively meet the member's medical needs.

13. The petitioner has at least average intelligence.

14. The petitioner's mother submitted a closing argument to DHA and OIG submitted its reconsideration summary to DHA. Both are received into the hearing record. See above Preliminary Recitals.

DISCUSSION

The petitioner and her provider, Northwest Journey- Stevens Point, seek reimbursement for 13 weeks of Child/Adolescent Day Treatment Services at a cost of $26,000. The Office of Inspector General denied the request for a variety of reasons, including that the services were provided before the request was made and proper documentation was submitted, and the requested CADT was not cost effective and appropriate.

The Office of Inspector General indicates that this is a "HealthCheck—Other Service" covered under Wis. Admin. Code, § DHS 107.22(4), a catch-all category applying to any service described in the definition of "medical assistance" found at 42 USC 1396d(a). Day treatment mental health services for children under 18 are more specifically covered by Wis. Admin. Code, Chapter DHS 40. To qualify for services, a child "must have a primary psychiatry diagnosis of mental illness or severe emotional disorder." Wis. Admin. Code, § DHS 40.08(3)(a). "Mental illness" is defined as a "medically diagnosable mental health disorder which is severe in degree and which substantially diminishes a child's ability to carry out activities of daily living appropriate for the child's age." Wis. Admin. Code, § DHS 40.03(16). Each child is evaluated by a psychologist or psychiatrist and has a treatment plan approved by a program. Wis. Admin. Code, §§ DHS 40.08(4) and 40.09(2)(c). Like any medical assistance service, it must be medically necessary, **cost-effective, and an effective and appropriate** use of available services. It must also meet the "limitations imposed by pertinent…state…interpretations." Wis. Admin. Code § DHS 107.02(3)(e)1.,2.,3.,6., 7, and 9. Wis. Admin. Code.

"Medically necessary" is defined in Wis. Admin. Code § DHS 101.03(96m) as 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;
> 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.

Northwest Journey requested 13 weeks of CADT services for the petitioner at a cost of $26,000 on January 9, 2014, seven days after she began receiving the services on January 1, 2014, and three weeks before provider submitted the required complete PA documentation to the Office of Inspector General.

Wis. Admin. Code, § DHS 107.02(3)(c) states: "If prior authorization is not requested and obtained **before** a service requiring prior authorization is provided, reimbursement shall not be made except in extraordinary circumstances such as emergency cases where the department has given verbal authorization for a service." This rule is not absolute. Wis. Admin. Code, § DHS 106.03(4)(a), which is found in the chapter in the administrative code pertaining to the provider's rights and responsibilities, allows an exception to this general rule "[w]here the provider's initial request for prior authorization was denied and the denial was either rescinded in writing by the department or overruled by an administrative or judicial order." In this case, petitioner's provider did not timely submit its PA for petitioner, and did not obtain timely verbal authorization for CADT services for petitioner.

This rule is needed because it can often take weeks or months for the Division to review requests for needed therapy. This especially creates problems if the request is for continuing or follow-up services and the lack of approval can interrupt ongoing treatment. But the preferred method is for the Office to review the request before services begin because it, unlike the Division of Hearings and Appeals, has medical training in the area under review that allows it to provide an expert opinion on whether the service is necessary. When reviewing a matter in which the services begin before being approved, Hearings and Appeals must look at all of the circumstances of the case.

It is relevant that this is at least the seventh time that one of Northwest Journey's branches has begun services before submitting a complete prior authorization request. *See DHA Decision Nos. MPA 58/10823, MPA/35/139624. MPA/142947, MPA/142933, MPA/143218, and MPA/147603.* Moreover, even if the request had been filed on time, the petitioner has not met her burden of showing that this CADT PA request is cost-effective, appropriate, and medically necessary treatment. The petitioner receives the following medical, psychiatric and social worker services: a) outpatient therapy with Dr. [redacted] [redacted] weekly; child psychiatrist, b) Dr. [redacted] who provides treatment supervision and medication adjustments and changes; c) school social worker, Ms. [redacted]; and d) hospitalizations for mental health interventions (see above Finding of Fact #10).

Despite this treatment, there is little evidence that her main problem—depression, anxiety and suicidal ideation—has improved significantly. Petitioner's mother in her June 12, 2014 letter explained in detail the three crises in the petitioner's life, and her many mental health problems. However, such explanation did not establish that CADT services were cost-effective or appropriate treatment for [redacted]. Furthermore, [redacted] continues to require residential care with periodic hospitalizations for urgent mental health circumstances. There is no reliable medical evidence in the hearing record that her overall behavior has improved much from the CADT services provided at Northwest Journey. In fact, petitioner's mother admitted that she was unable to provide medical records from any of petitioner's

various medical providers to submit to the division of Hearings and Appeals (DHA) for this appeal. The petitioner was unable to refute with any convincing evidence that OIG incorrectly denied the petitioner's PA request. Accordingly, based upon the above, I conclude that the Department correctly denied the petitioner's January, 2014 prior authorization (PA) request for Child Adolescent Day Treatment (CADT), due to not cost effective and appropriate when less expensive and appropriate services were available to meet petitioner's medical needs.

CONCLUSIONS OF LAW

The Office of Inspector General correctly denied the petitioner's PA request for CADT because she and her provider have not shown by the preponderance of the credible evidence that the requested CADT therapy is cost-effective, appropriate, and medically necessary.

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 29th 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
Internet: http://dha.state.wi.us

The preceding decision was sent to the following parties on August 29, 2014.

Division of Health Care Access and Accountability