



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/156068

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 10, 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 telephone hearing was held on May 22, 2014. A hearing scheduled for May 5, 2014, was rescheduled at petitioner's request. Post-hearing, the record was held open to allow petitioner's representatives to provide additional documentation. Said documentation was timely submitted.

The issue for determination is whether the petitioner is entitled to medical assistance reimbursement for Child/Adolescent Day Treatment (CADT).

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Petitioner's Representative:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Jo Ellen Crinion RN, CPC  
Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Waushara County.

2. On or about January 17, 2014, the petitioner with his provider, [REDACTED] [REDACTED] [REDACTED], requested Child/Adolescent Day Treatment Services (CADT) five hours a day, four days a week for 13 weeks at a cost of \$20,800. Those services had begun on January 22, 2014.
3. On January 17, 2014, the Division of Health Care Access and Accountability requested that the petitioner's provider submit additional documentation:
  - a. Initial Assessment
  - b. HealthCheck Referral
  - c. Prescription
  - d. Initial Treatment Plan
  - e. Schedules
  - f. Psychiatric Note
  - g. CAFAS
  - h. MSE
4. Petitioner's provider responded to the request for documentation; the record does not disclose the date of said response.
5. On January 28, 2014, the Division of Health Care Access and Accountability requested that the petitioner's provider correct certain errors and incorrect data.
6. On February 10, 2014, the petitioner's provider responded to the request for corrections.
7. The petitioner is a thirteen-year-old boy diagnosed with attention-deficit/hyperactivity disorder, adjustment reaction OT, oppositional defiant disorder, and has a history of physical and sexual abuse, and possible post-traumatic stress disorder.
8. The petitioner receives concurrent care from Community Case Resources, meets monthly with a Jefferson County Social Worker, and receives outpatient family therapy with Dr. [REDACTED] [REDACTED].
9. The petitioner has a significant history of angry outbursts at school. His behavior was described as: screaming and yelling in classrooms, throwing colored pencils around a room, making an inappropriate comment regarding his genitalia to female peers, picking on a special education student on his bus, and spitting on the bus. Petitioner is no longer allowed on the bus.
10. The petitioner's behavior at school prevents him from maintaining passing grades and led to numerous suspensions.
11. [REDACTED] [REDACTED]'s plan called for the following:
  - a. Individual Counseling: 1 hour weekly by a Mental Health Clinician
  - b. Group Counseling: 5 hours daily by a Mental Health Professional. Areas targeted include: anger management, emotional development, positive coping skills, conflict resolution, adult/authority figure communication skills, appropriate peer interaction, independent living skills, and positive relationship development.
  - c. Medication Monitoring: monthly and as needed, by a Registered Nurse
  - d. Recreational Therapy: 2 hours weekly by a certified provider
  - e. Educational Services: 55 minutes daily by a Mental Health Professional with consultation from a licensed teacher
  - f. Family Counseling Sessions: monthly by a Mental Health Clinician
  - g. Case Management Services: 30 minutes weekly by a qualified Case Manager
  - h. Clinical Team Reviews: once per month or more frequently if indicated by the client's condition or requested by a multi-disciplinary team member
12. The petitioner has responded well and improved greatly since commencing the CADT program.

## DISCUSSION

The petitioner and his provider, [REDACTED] [REDACTED] [REDACTED], seek reimbursement for three months of Child/Adolescent Day Treatment Services at a cost of \$20,800. The Division of Health Care Access and Accountability denied the request because the documentation submitted does not support CADT as the most cost-effective and appropriate service which may effectively meet petitioner's needs and CADT is duplicative with regard to other services readily available in petitioner's community or the mental health services already being provided.

The Division indicates that this 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). When determining what law to apply, one looks first to the one that most specifically covers the situation. Day treatment mental health services for children under 18 are specifically covered by Wis. Admin. Code, Chapter DHS 40. I will rely upon that provision to determine whether the petitioner qualifies for services.

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.

The pertinent interpretation of the requirements that must be met to receive adolescent day services is found at *Wisconsin Medicaid and BadgerCare Update* No. 96-20. It states:

Child/adolescent day treatment services are covered when the following are present:

- Verification that a HealthCheck screen has been performed by a valid HealthCheck screener dated not more than one year prior to the requested first date of service (DOS).
- A physician's prescription/order dated not more than one year prior to the requested first DOS.
- Evidence of an initial multidisciplinary assessment that includes all elements described in DHS 40.09, Wis. Admin. Code, including a mental status examination and a five-axis diagnosis.
- The individual meets one of the following criteria for a determination of "severely emotionally disturbed" (SED):
  - Is under age 21; emotional and behavioral problems are severe in degree; are expected to persist for at least one year; substantially interfere with the individual's functioning in his or her family, school, or community and with his or her ability to cope with the ordinary demands of life; and cause the individual to need services from two or more agencies or organizations that provide social services or treatment for mental health, juvenile justice, child welfare, special education, or health.
  - Substantially meets the criteria previously described for SED, except the severity of the emotional and behavioral problems have not yet substantially interfered with the individual's functioning but would likely do so without child/adolescent day treatment services.
  - Substantially meets the criteria for SED, except the individual has not yet received services from more than one system and in the judgment of the medical consultant, would be likely to do so if the intensity of treatment requested was not provided.
- A written multidisciplinary treatment plan signed by a psychiatrist or clinical psychologist as required in DHS 40.10, Wis. Admin. Code, that specifies the services that will be provided by the day treatment program provider, as well as coordination with the other agencies involved.
- Measurable goals and objectives that are consistent with the assessment conducted on the child and written in the multidisciplinary treatment plan.
- The intensity of services requested are justifiable based on the psychiatric assessment and the severity of the recipient's condition.

The main issue in the instant case is whether the petitioner has established that the requested therapy was medically necessary. The petitioner, who is thirteen years old, has historically suffered physical and sexual abuse. Since then, he has had serious behavioral problems that exhibited themselves through a history of angry outbursts at school and at his foster home. Petitioner's foster parents testified that they received regular phone calls from his school regarding petitioner's outbursts, anger issues, and inability to control his impulses. They reported that he had been suspended on several occasions as a result, and was facing expulsion. Petitioner's enrollment at [REDACTED] [REDACTED] has helped to address his behavioral issues. [REDACTED] [REDACTED]'s program was devised to deal specifically with these problems. See, Finding of Fact 11.

Arguing that CADT was not cost-effective, the respondent proposed that petitioner could possibly benefit from involvement with the YMCA and/or the Boy Scouts. This would appear to reflect a severe underestimation of the severity of the petitioner's medical history and his current diagnoses. While those institutions certainly serve an important purpose, the petitioner's mental health needs would definitely fall outside of the scope of the services that they could provide.

The respondent also suggests that adding some additional therapy sessions with petitioner's existing therapists would be more cost effective. Petitioner's providers do not concur. Petitioner's County Social Worker testified that peittioenr's day treatment was absolutely necessary, as the previous provision of services was not at all sufficient. She further noted that it was only after day treatment commenced that she saw a turn around in petitioner's behaviors. Petitioner's in-home therapist commented that day treatment allows support and monitoring throughout the day, which lends itself to addressing issues int eh

moment. She concurred that the petitioner has responded very well to his program. Dr. [REDACTED] testified that without his successful day treatment programming, the petitioner would be looking at residential placement.

The respondent also raised the issue of duplication of services. I note that the petitioner's provider's plan devoted an entire section to dealing with the duplication issue, which it titled: "Interagency Treatment Plan." See, Exhibit 4. That Plan discussed the services that petitioner receives from his various providers, and verifies that all will be invited to petitioner's team meetings, as well as receive monthly treatment plan updates.

Generally, when one seeks a service, determining whether it will succeed is an educated guess because the services have not yet been provided. In this matter, the requested program can be judged at least in part by its results. This evidence indicates that he had serious behavioral issues, that [REDACTED] [REDACTED] put him in a program that addressed these issues, and that it did so successfully. There is some question whether even with this success the program was cost-effective, given that it cost \$20,800, I find that it was because at the time the petitioner entered it, the alternative appeared to be expulsion from school and possible institutionalization, which would have cost even more. Given the evidence before me, I find that the service was cost effective and medically necessary and will approve it.

As a final note, the respondent noted that the petitioner's provider did not provide certain signatures for the treatment plan. The petitioner explained that because the initial PA request was urgent, it was submitted without signatures. Those signatures were provided by the petitioner post-hearing.

**I note to the petitioner and his mother that [REDACTED] [REDACTED] [REDACTED] will not receive a copy of this decision. Therefore, in order for it to receive payment for these services, the petitioner must provide [REDACTED] [REDACTED] a copy of this decision. [REDACTED] [REDACTED] will be required to submit a new Prior Authorization Request WITH ALL TREATMENT PLAN SIGNATURES to receive payment for the services it has provided.**

#### CONCLUSIONS OF LAW

The petitioner is entitled to medical assistance reimbursement for CADT services because he has established that those services are medically necessary.

**THEREFORE, it is**

**ORDERED**

That the petitioner's adolescent day treatment provider, [REDACTED] [REDACTED] [REDACTED], is entitled to receive reimbursement for the services provided pursuant to the Prior Authorization Request that is the basis for this action. [REDACTED] [REDACTED] [REDACTED] must submit its claim along with a copy of this decision and a new prior authorization form WITH ALL TREATMENT PLAN SIGNATURES to Forward Health for payment.

#### **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 2nd day of July, 2014.

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\sPeter McCombs  
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 July 2, 2014.

Division of Health Care Access and Accountability  
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