



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION

MPA/156405

PRELIMINARY RECITALS

Pursuant to a petition filed March 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 May 15, 2014, at Alma, Wisconsin. A hearing scheduled for April 14, 2014, was rescheduled at the petitioner's request.

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 Buffalo County.

2. On January 15, 2014, S.P.O.T.S. Pediatric Therapy requested 24 weekly 45 to 60-minute speech and language sessions on behalf of the petitioner at a cost of \$10,504.15.
3. The petitioner is an 11-year-old boy diagnosed with autism, Tourette's, and an articulation disorder. His intelligence is at least average.
4. The petitioner does not receive speech therapy through his school district. He is home-schooled.
5. Results from the Goldman Fristoe Test of Articulation, 2nd Edition, indicated that the petitioner was below the 1st percentile in the sound-in-words subtest. He made the following articulation errors when saying a single word:
 - a. Distortion of "sh" in all positions
 - b. Distortion of "ch" in all positions
 - c. Substitution of /w/ for /r/ in the final position
 - d. Omission of final /l/
 - e. Substitution of /b/ for /v/ in the initial position
 - f. Distortion of /s/ in the medial and final position
 - g. Distortion of /z/ in the medial and final position
 - h. Substitution of /d/ for voiced "the" in the medial position
 - i. Substitution of /w/ for /r/ in initial /fr/ blends
 - j. Distortion of /s/ in initial /st/, /sw/, and /sl/ blends
 - k. Distortion of /t/ in initial /tr/ blends
6. The petitioner made more articulation errors in spontaneous speech than he did in the single-word test.
7. The petitioner's mother understands him 100% of the time, his therapist understands him 98% of the time, and (according to his mother) others understand him 60% of the time. His therapist indicated that his overall speech intelligibility is within the average age for a child his age.
8. The petitioner's therapist found that he had a slight "pragmatic" delay that was illustrated by his difficulty with conversation. A pragmatic delay refers to problems understanding the meaning of what others are saying and using language appropriately to get their needs met and to interact with others. The petitioner has no problems understanding others.
9. S.P.O.T.S. set the following goals, objectives, and subobjectives for the petitioner:
 - a. Accurately produce all phonemes, including "s", "z", "ch", "sh", and "r" in all positions of words in 8 of 10 opportunities:
 - i. Objective 1: Accurately produce "s" and "z" phonemes in medial and final positions of words in 8 of 10 opportunities:
 1. Objective 1a: when provided prompting
 2. Objective 2a: independently
 - ii. Objective 2: Accurately produce "sh" and "ch" phonemes in 8 of 10 opportunities:
 1. Objective 2a: in isolation
 2. Objective 2b: in words
 3. Objective 2c: in carrier phrases
 4. Objective 2d: in spontaneous speech
 - iii. Objective 3: Accurately produce the "r" phoneme in 8 of 10 opportunities:
 1. Objective 3a: in isolation
 2. Objective 3b: in words
 3. Objective 2c: in carrier phrases
 4. Objective 3d: in spontaneous speech

- b. Goal 2: Participate in at least 5 different conversations through at least 10 turns each with at least 5 different communication partners. When doing so, [petitioner] will ask at least 3 questions of his communication partner.
 - i. Objective 1: Ask questions in order to continue the flow of conversation in 4 of 5 opportunities each session for 3 treatment sessions, when provided with visual support.
 - ii. Objective 2: Ask questions in order to continue the flow of conversation in 4 of 5 opportunities each session for 3 treatment sessions, when NOT provided with visual support.
10. S.P.O.T.S. recommended that the petitioner participate in the non-skilled adolescent conversation group because he would benefit from practice with his peers. His mother has not enrolled him in this group.
11. The petitioner has received speech therapy since 2006. His mother did not provide any records of prior therapy.

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, S.P.O.T.S. Pediatric Therapy, requested 24 weekly 45 to 60-minute speech and language sessions at a cost of \$10,504.15. 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. Wis. Admin. Code, § DHS 107.02(3)(e). “Medically necessary” means 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.

Wis. Admin. Code, § DHS 101.03(96m).

One way the Division ensures that speech therapy meets these criteria is to bar additional therapy if “the recipient has shown no progress toward meeting or maintaining established and measurable treatment goals over a 6-month period...” Wis. Admin. Code § DHS 107.18(3)(e)1.

The petitioner is an 11-year-old boy diagnosed with autism, Tourette's Syndrome, and problems with speech articulation. As usual, S.P.O.T.S. has developed and submitted a plan specifically tailored to his needs rather than relying upon the cut-and-paste submissions I often review. It identifies 11 separate speech errors committed by the petitioner and developed a step-by-step process for overcoming those deficits. The Office of Inspector General indicates that there is no medical need for the treatment because the petitioner's speech is generally understandable. His mother disputes that he is understandable, indicating that those unfamiliar with him understand only 60% of what he says. I find this assertion questionable because she understands 100% of what he says, his therapist understands 98%, and his therapist indicated in the prior authorization request that his overall speech intelligibility is within the average age for a child his age. Still, I disagree with the Office of Inspector General's conclusion that this means he has no medical need for therapy. Although his speech may be understandable, he clearly has speech impediments. These impediments carry a stigma that can hinder socialization and employment opportunities.

But there are problems with the request.

The first is that there is no way to determine whether the petitioner has shown progress toward meeting or maintaining established and measurable treatment goals over a six-month period. He had been receiving therapy in another state since 2006. The Office of Inspector General requested records from his prior therapists so that it could determine what goals and techniques made up that therapy and compare these with the current proposal. S.P.O.T.S. could not obtain this information; its file note indicated that the petitioner's mother did not obtain and provide past records to them. No one from S.P.O.T.S. testified, so I do not know if it asked the petitioner's mother to sign any medical records requests or if she simply refused to cooperate. Regardless of the history, S.P.O.T.S. suggests in a submission to the Office of Inspector General that prior therapy is irrelevant because S.P.O.T.S. uses different techniques than previous providers. The problem is that without documentation of the prior therapy there is no way to determine whether S.P.O.T.S.'s assertion is correct. The petitioner has the burden of proving by the preponderance of the credible evidence that the therapy meets the criteria required for approval. He cannot prove that he has made progress when he does not provide information—information that he has access to—that indicates what treatment he had and what progress he made in the past.

Another problem is that it does not appear that the petitioner can meet the second goal, which is for him to “[p]articipate in at least 5 different conversations through at least 10 turns each with at least 5 different communication partners.” This goal is meant to address his deficits in communicating when interacting with others. S.P.O.T.S. suggested that he participate in the non-skilled adolescent conversation group because he would benefit from practice with his peers. His mother did not enroll him in this group. (It is unclear why she did not.) Because he would not interact with more than one or two persons at a time as part of his regular sessions at S.P.O.T.S., he cannot receive the full benefit of this portion of the proposed program. In addition, his mother home-schools him. She has the right to provide his schooling as she sees fit, but home-schooling limits his interaction with his peers which further decreases his opportunity to meet this goal.

Finally, I have a concern not raised by the Office of Inspector General. S.P.O.T.S. requests 24 sessions lasting from 45 minutes to an hour and seeks \$10,504.15 for its services. This means it is billing around \$450 for each hour of therapy it would provide. I understand that it must prepare a plan and prepare for each session; I am also aware that the Department reimburses services provided through hospitals differently than it reimburses outpatient services. Nevertheless, the cost of a service must be balanced against the expected outcome. The petitioner has definite speech defects but is generally understood. In this matter, even if he meets all of his goals, the cost of the therapy is too high in relation to the intended outcome. For this and the other two reasons discussed in this decision, his request for speech therapy is denied.

CONCLUSIONS OF LAW

The Office of Inspector General correctly denied the petitioner's request for speech therapy because he has not shown that he can sustain improvement for six months, he would not adequately participate in the therapy in a manner needed to reach his goals, and the cost of the services is too high in relation to the expected outcome.

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 18th day of June, 2014

\sMichael D. O'Brien
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 June 18, 2014.

Division of Health Care Access and Accountability