



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/156971

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 15, 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 13, 2014, at Eau Claire, Wisconsin.

The issue for determination is whether the petitioner is entitled to medical assistance reimbursement for speech therapy.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

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 Eau Claire County.

2. On February 5, 2014, the petitioner with S.P.O.T.S. Pediatric Therapy requested reimbursement for an evaluation and 26 weekly 45-minute sessions of speech therapy at a cost of \$4,475.20. The Office of Inspector General denied the request on March 24, 2014. The petitioner seeks therapy retroactive to January 20, 2014, because of retroactive medical assistance eligibility. She also seeks reimbursement for an evaluation performed on December 16, 2013.
3. The petitioner is almost five years old.
4. The petitioner was diagnosed with autism on October 17, 2013. He is also diagnosed with a mixed language disorder.
5. S.P.O.T.S. identifies the following communication deficits in the petitioner:
  - a. Limited turn-taking
  - b. Limited attention
  - c. Poor eye contact
  - d. Limited play skills
  - e. Limited use of creative, generative expressive language
  - f. Limited vocabulary use in play and ADLs
  - g. Limited use of age-appropriate sentence structure and grammatical morphemes
  - h. Difficulty talking about past, future, and abstract events
  - i. Difficulty following direction
  - j. Difficulty understanding age-appropriate concepts
6. The petitioner's speech is understandable, but he does not participate in conversations with others, does not tell his mother what happens during the school day, does not respond to questions, often fails to indicate when he done with something or needs a break, and frequently walks away from a person or activity.
7. The petitioner frequently uses echolalia, especially when asked questions.
8. S.P.O.T.S. set the following goals and objectives for the petitioner:
  - a. Goal 1: [Petitioner] will use creative, generative, relevant utterances at least 75% of the time during play and activities of daily living.
    - i. Objective 1: [Petitioner] will complete at least 5 different play activities in one treatment session with minimal redirection from an adult.
    - ii. Objective 2: [Petitioner] will sustain play with an adult through at least 10 turns with minimal adult prompting.
    - iii. Objective 3: [Petitioner] will use 5 different carrier phrases EXCLUDING "I need" phrases to create at least 5 different appropriate utterances in the context of at least 5 different play activities.
    - iv. Objective 4: [Petitioner] will spontaneously use at least 10 different creative utterances in one play activity, for at least 5 different play activities.
    - v. Objective 5: [Petitioner] will spontaneously use at least 3 of EACH of the following utterances types in one 45 minutes period of time: Agent-action, action-object, entity-locative, attribute-entity, agent-action-object, agent-action-locative.
  - b. Goal 2: [Petitioner] will use language to protest, make choices, and answer questions in 8 of 10 trials in one treatment session.
    - i. Objective 1: [Petitioner] will state when he does not want something at least 5 times in one treatment session
    - ii. Objective 2: [Petitioner] will make a verbal choice between a favored item and a neutral item, when the favored item is presented first in the choice AND last in the choice, in 8 of 10 attempts.

- iii. Objective 3: When [Petitioner] is asked if he wants something, he will answer “yes” when he wants something and “no” when he does not want something, with 80% accuracy over 10 trials.
    - c. Goal 3: [Petitioner] will follow at least 5 different 2 step directions in one treatment session.
      - i. Objective 1: [Petitioner] will follow 1-step directions in 4 of 5 trials in one treatment period, no adult prompts.
      - ii. Objective 2: [Petitioner] will demonstrate comprehension of at least 10 different verbs in play by performing the named action at least one time independently with no adult prompts.
      - iii. Objective 3: [Petitioner] will demonstrate comprehension of the following concept words: in, off, out, and on by performing an action with 80% accuracy when involved in an activity that requires him to comprehend both pairs (in/out; off/on) for one activity.
9. The petitioner has received speech therapy through the Eau Claire school district since September 2012. He currently attends the school four days a week. His individualized education plan indicates that he “has a large vocabulary but he does not use language to communicate with others” and states that “verbal speech is a strength for him.” It goes on to state that when a teacher tries to get his attention, he will often avoid eye contact or move away. He does not demonstrate “reciprocal joint interactions such as conversations. Nor does he use gestures to communicate, and he has limited understanding when others use gestures. When answering, he tends to use rote phrases, including movie lines or repeated phrases.
10. The school district’s plan for the petitioner calls on his instructors to use a variety of techniques to allow him to identify exactly what is being asked of him, connect visual with auditory information, expand his expressive language and conversational skills in the areas of making unprompted and spontaneous communication, describing what he is doing, and using new word rather than rote words and phrases when speaking.

### 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 26 weekly 45-minute sessions of speech therapy at a cost of \$4,475.20. 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. 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).

The petitioner is a boy now nearly five years old who was diagnosed with autism last fall. According to S.P.O.T.S.'s request and the testimony of its therapist at the hearing, he can speak a large number of words fluently but does not engage in normal conversations, respond to questions, or indicate when he is done with something or needs a break. Although he has a normal vocabulary, he does not use this vocabulary in most of his speech, and instead relies upon stock phrases and echolalia to respond to questions. The Office of Inspector General contends that the requested therapy duplicates therapy he receives from his school, which he attends four days a week. The petitioner's mother has testified that the her son's doctor indicated that school therapy was the "right medicine but the wrong dose." The petitioner's mother also testified that the school is not as involved with her as S.P.O.T.S. is. S.P.O.T.S. is available "24x7" while the school only meets with her twice a year. (There is no evidence, however, that the school therapists have refused to talk to her.) S.P.O.T.S.'s therapist testified that the goals of the school therapy actually describe techniques rather than provide objectives.

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 his 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, he and his provider must establish by the preponderance of the credible evidence that duplication does not occur.

I have no doubt about the quality of therapy provided by S.P.O.T.S. Its requests, unlike the cut-and-paste proposals from providers who appear to have only one tool in the shed, are always coherent, comprehensive, and tailored specifically to one particular recipient. This is the second speech request I have reviewed from them today, and, although both pertain to children with autism, they bear almost no resemblance to each other. Still, medical assistance is a public program that must provide services to a large number of persons. This means that, although recipients have the right to adequate services, they are not entitled to every service that may help them.

The school's goals could have been more artfully written. Instructing teachers to use fewer words when expecting a response from the petitioner, as the school IEP does, is a technique and not a goal. But reviewing the entire school IEP indicates that it seeks to travel down the same path as S.P.O.T.S. His individualized education plan indicates that he "has a large vocabulary but he does not use language to

communicate with others” and states that “verbal speech is a strength for him.” It goes on to state that when a teacher tries to get his attention, he will often avoid eye contact or move away. It points out that he does not demonstrate “reciprocal joint interactions” such as conversations. Nor does he use gestures to communicate, and he has limited understanding when others use gestures. When answering, he tends to use rote phrases, including movie lines or repeated phrases. These strengths and weaknesses are basically the same as those identified by S.P.O.T.S. Both indicate that he can speak a large number of words but does not understand the fundamentals of actually communicating.

The school district’s therapy attempts to accomplish the same basic things as S.P.O.T.S.’s does. The school district’s seeks to allow him to identify exactly what is being asked of him, connect visual with auditory information, expand his expressive language and conversational skills in the areas of making unprompted and spontaneous communication, describing what he is doing, and using new words rather than rote words and phrases when speaking. S.P.O.T.S.’s goals, which are copied verbatim in *Finding of Fact No. 8*, contain more detail but seek a similar result.

What both the school and S.P.O.T.S. are addressing is the intersection between socialization and language. The petitioner has a vocabulary consistent with his age but has not been able to use it to communicate properly with adults and his peers. S.P.O.T.S. is a qualified provider, and the petitioner undoubtedly benefits from its services. But a school is a place where social interaction occur naturally and frequently. Based upon the evidence before me, I find that the requested therapy duplicates the school’s therapy and therefore must deny the request.

### CONCLUSIONS OF LAW

The petitioner is not entitled to medical assistance reimbursement for speech and language therapy because the requested therapy is not 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 19th day of June, 2014

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\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 June 19, 2014.

Division of Health Care Access and Accountability