



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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/157825

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**PRELIMINARY RECITALS**

Pursuant to a petition filed May 22, 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 July 01, 2014, at Waukesha, Wisconsin.

The issue for determination is the Department of Health Services, Division of Health Care Access and Accountability correctly denied the Petitioner’s request for speech therapy services.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED] |  
[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: OIG by letter

Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Waukesha County.

2. On March 5, 2014, Health Reach Rehabilitation submitted, on behalf of Petitioner, a prior authorization request for a speech sound language comprehension evaluation and 24 sessions of speech therapy at a cost of \$2,410.00. (Exhibit 3, pg. 5)
3. The long term goal of the requested therapy was for Petitioner to, “successfully utilized an AAC device to communicate to her highest potential.” The short term goals were for Petitioner to, “make a choice between four items in 4 out of 5 opportunities when provided with visual cues...answer yes/no questions in 4 out of 5 opportunities when provided with visual cues...answer wh-questions in 3 out of 5 opportunities using AAC device...Communicate wants and needs x2 using AAC device with minimal assist from SLP during treatment session.” (Exhibit 3, pg. 6)
4. On April 9, 2014, the Department of Health Services (DHS) sent the Petitioner a notice advising her that the requested services were denied. (Exhibit 3, pgs. 57-60)
5. On April 9, 2014, DHS sent Health Reach Rehabilitation notice of the same. (Exhibit 3, pgs.61-62)
6. The Petitioner’s father filed, on behalf of the Petitioner, a request for fair hearing that was received by the Division of Hearings and Appeals on May 22, 2014. (Exhibit 1)
7. The Petitioner is an 11 year old girl who has been diagnosed with developmental delays and gross motor limitations. (Exhibit 3, pg. 23)
8. The Petitioner communicates using a Tech Talk; she also uses a felt board with four choices while at home. (Exhibit 3, pg. 6 and pgs. 26-27)
9. At the time the prior authorization request was submitted the Petitioner was receiving special education services through her school district. (Exhibit 3, pgs. 17-50)
10. The Petitioner’s Individualized Education Program (IEP) does not require the district to provide direct speech therapy services to the Petitioner. However, the speech therapist is to work, 30 minutes per week, in consultation with the special education teacher, occupational therapist to “address assignment modifications and increase Cate’s active participation throughout her day.” The speech therapist is also to work, 30 minutes per week, in consultation with the special education staff, general education staff for, “structuring communicative exchanges with [petitioner] environmental modification to elicit active communication, picture/vocabulary overlays and aided language input/modeling.” (Exhibit 3, pgs. 45-47)
11. The following are among the goals of Petitioner’s IEP:
  - a. At the beginning of an activity, [petitioner] will initiate communication to ask a “what” question using her communication device in order to determine the planned activity to be completed in 3/5 trials with 80% accuracy.
  - b. Given “core” vocabulary word overlays, [petitioner] will used 1-2 word messages in order to communicate requests and/or rejections and make comments throughout participation in an activity from currently using 3 successful messages per activity and moving towards 8-10 successful messages per activity and moving towards 8-10 messages per activity.
  - c. When given specific “fringe” vocabulary word overlays and a predictable routine, [petitioner] will use single word messages in order to respond to WH questions (who, what, where, when) using her communication device in the regular education classroom with 60% accuracy across 3/5 opportunities.

**DISCUSSION**

The Department of Health Services sometimes requires prior authorization to:

1. Safeguard against unnecessary or inappropriate care and services;
2. Safeguard against excess payments;
3. Assess the quality and timeliness of services;
4. Determine if less expensive alternative care, services or supplies are usable;
5. Promote the most effective and appropriate use of available services and facilities; and
6. Curtail misutilization practices of providers and recipients.

Wis. Admin. Code § DHS107.02(3)(b)

Speech and language therapy is a Medicaid covered service, subject to prior authorization after the first 35 treatment days. Wis. Admin. Code, § DHS107.18(2).

Wis. Admin. Code § DHS107.18(1)(a) defines covered speech and language pathology services as those services that are, “medically necessary, diagnostic, screening, preventive or corrective speech and language pathology services prescribed by a physician and provided by a certified speech and language pathologist or under the direct, immediate on-premises supervision of a certified speech and language pathologist.”

Wis. Admin. Code Wis. Admin. Code § DHS107.18(1)(c) lists the speech procedure treatments that must be performed by a certified speech and language pathologist or under the direct, immediate, on-premises supervision of a certified speech and language pathologist:

1. Expressive language:
  - a. Articulation;
  - b. Fluency;
  - c. Voice;
  - d. Language structure, including phonology, morphology, and syntax;
  - e. Language content, including range of abstraction in meanings and cognitive skills; and
  - f. Language functions, including verbal, non-verbal and written communication;
2. Receptive language:
  - a. Auditory processing — attention span, acuity or perception, recognition, discrimination, memory, sequencing and comprehension; and
  - b. Visual processing — attention span, acuity or perception, recognition, discrimination, memory, sequencing and comprehension;
3. Pre-speech skills:
  - a. Oral and peri-oral structure;
  - b. Vegetative function of the oral motor skills; and
  - c. Volitional oral motor skills; and . Hearing/auditory training:
4. Hearing screening and referral;
  - a. Auditory training;
  - b. Lip reading;
  - c. Hearing aid orientation; and
  - d. Non-verbal communication.

“In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;

3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including Medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.”

Wis. Admin. Code §DHS107.02(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. DHS 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.

*Emphasis Added.* Wis. Adm. Code. §DHS 101.03(96m)

Petitioner has the burden to prove, by a preponderance of the credible evidence that the requested level of therapy meets the approval criteria.

In the case at hand, DHS objected to requested speech therapy because at the time the prior authorization request was made, the Petitioner was already receiving speech therapy services from her school district.

Comparing the goals of Petitioner’s IEP with the goals of the requested therapy, it is apparent that they are substantially similar and have the same fundamental goal for the Petitioner and that is to improve her ability to communicate with an AAC device. As such, it is found that the requested therapy was duplicative of the services Petitioner was receiving at school. Consequently, the requested services do not

meet the definition of a medically necessary service as described by Wis. Adm. Code. §DHS 101.03(96m), above.

It should be noted that the prior authorization request indicated that Petitioner's private speech therapist wanted to introduce a new AAC device, a Dynavox, to the Petitioner. However, there is no documentation of any coordination of this goal with the school therapist and as such, leaves one with the conclusion that the requested therapy would be contraindicated by the services provided by Petitioner's school. So again, the requested services do not meet the definition of a medically necessary service as described by Wis. Adm. Code. §DHS 101.03(96m), above.

It should also be noted, that the Plan of Care that Health Reach Rehabilitation submitted with the prior authorization request did not contain a physician's signature. Per Wis. Admin. Code § DHS107.18(1)(a) speech therapy services must be prescribed by a physician, in order to be approved.

Based upon the foregoing, it is found that DHS correctly denied the request for prior authorization of speech therapy services.

The Petitioner's father testified that the Petitioner has been pulled out of public school and will be home schooled, beginning in the fall of 2014. If that is the case, Health Reach Rehabilitation may submit a new request for prior authorization, explaining this change in circumstances.

The Petitioner might also consider seeking out services from the Speech and Hearing Clinic at the University of Wisconsin Madison, which might offer an affordable alternative to private therapy. Information about the program can be found on-line at:

<http://csd.wisc.edu/clinic-overview.htm>

### **CONCLUSIONS OF LAW**

DHS correctly denied the Petitioner's March 2014 request for prior authorization of speech therapy services.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 4th day of August, 2014.

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\sMayumi M. Ishii  
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](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on August 4, 2014.

Division of Health Care Access and Accountability