



FH
[REDACTED]

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

In the Matter of

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

DECISION

MPA/158073

PRELIMINARY RECITALS

Pursuant to a petition filed May 29, 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 15, 2014, at Sheboygan, Wisconsin.

The issue for determination is whether the agency properly denied OT services to the Petitioner.

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: Mary Chucka

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

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Sheboygan County.
2. Petitioner is 7 years old. She lives at home with her family. Her primary diagnoses are autism and scoliosis. She has delayed milestone and lack of coordination.

3. Petitioner receives 40 hours/week of in-home autism services. She is home-schooled so she does not receive school services.
4. On March 3, 2014, a PA request was submitted by Rehab Resources on the Petitioner's behalf for an OT evaluation and OT services 1x/week for 26 weeks.
5. Problems to be treated include decreased visual attention to tasks, decreased fine motor abilities, decreased bilateral coordination abilities, decreased visual motor skills, an overall delay in self-help/ADL skills. Petitioner requires total assist to don her socks, maximum assist to don pullover garments, maximum assist to use a fork and she frequently spills during meals when attempting to use a spoon.
6. On April 29, 2014, the agency denied the Petitioner's PA request.
7. On May 29, 2014, an appeal was filed on the Petitioner's behalf with the Division of Hearings and Appeals.

DISCUSSION

Medical assistance covers occupational therapy if the recipient obtains prior authorization after the first 35 visits. Wis. Admin. Code, § DHS 107.17(2)(b). When determining whether a service is necessary, the agency must review, among other things, whether the service is medically necessary and an effective and appropriate use of available services. Wis. Admin. Code, § DHS 107.02(3)(e)1 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. 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.

Wis. Admin. Code, § DHS 101.03(96m).

An effective proposal for occupational therapy must follow a several-step process. It must first determine the nature of the recipient's disability and the functional limitations that that disability imposes upon him. This requires tests that identify the causes of these functional limitations. Second, it must set goals to help the recipient live with the problems. Third, it must develop a treatment plan that has a realistic chance of

accomplishing the goals. In addition, the treatment must actually require the services of an occupational therapist or else it is not a cost-effective use of the medical assistance program's limited funds.

The agency, in its written summary dated June 26, 2014, asserts that the OT evaluation which was done is not complete and does not correlate specific problems of the Petitioner with her current functional status. It notes that the information submitted with the PA request does not sufficiently document why the Petitioner only uses one hand to put on her socks and clothing. It contends that the information submitted does not sufficiently document the Petitioner's specific problems in using utensils, how frequently the problems occur and what causes the problems. The agency contends the request does not meet the criteria of "medical necessity" as noted above in DHS 101.03(96m)(b)1.

The Petitioner was represented at the hearing by her mother and therapists. The therapist testified that, due to the scoliosis condition, the Petitioner lacks postural control and alignment. This causes her to use one hand for support when she tries to put on her socks or other clothing. The plan is to work on body awareness and control so that she is able to use both hands. The therapist also noted that, due to the Petitioner's autism, she has problems with sequencing which will be addressed by the therapy.

With regard to the use of utensils, the therapist and Petitioner's mother testified that 75-100% of the Petitioner's meals require the use of a spoon. The Petitioner is unable to hold a utensil at the correct angle. Therefore, she frequently spills when she attempts to use utensils. The therapist testified that she has not yet been able to determine why the Petitioner holds the utensils at an angle but believes it to be a combination of lack of sensory skills and delayed fine motor skills.

The Plan of Care submitted with the PA indicates that the goal is to improve bilateral coordination, fine motor skills, visual attention to tasks and visual motor skills to help the Petitioner become more successful in her activities of daily living, specifically donning socks and shirts and using utensils without spills.

The provider has identified the Petitioner's problems and set proper goals. The problem is that there is no way to judge whether its program will realistically allow the Petitioner to meet these goals. The information in the plan of care is so broad that it provides no insight into what particular means the provider will use to reach each particular goal. It is not enough to cite a general statement of all the techniques the therapist uses to treat any problem. Improving the petitioner's ability to don clothing requires something different than improving her ability to use utensils and the proposal should reflect this. Providing specific information on treating the petitioner is important because the Office of Inspector General and the Division of Hearings and Appeals must objectively evaluate the therapy proposal, which they cannot do if they do not know what techniques the provider is using.

The objective evaluation is especially important in this matter because Wis. Admin. Code, § 107.17(3)(e) requires the Department deny additional services if the "recipient has shown no progress toward meeting or maintaining established and measurable treatment goals over a six-month period, or the recipient has shown no ability within six months to carry over abilities gained from treatment in a facility to the recipient's home." Without objective baseline measurements and measurable treatment goals, it is difficult to determine if progress is being made.

The petitioner has the burden of proving by the preponderance of the credible evidence that therapy is necessary and meets the criteria. The treatment plan in this case is insufficient to determine whether the treatment can realistically meet the Petitioner's goals and whether the services of an OT are necessary. Based upon the evidence before me, I find that this request does not meet the criteria as a medically necessary service.

CONCLUSIONS OF LAW

The agency properly denied the Petitioner's request for OT services.

THEREFORE, it is ORDERED

That the Petitioner's appeal 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 14th day of August, 2014

\sDebra Bursinger
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 August 14, 2014.

Division of Health Care Access and Accountability