



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of

[Redacted]  
[Redacted]  
c/o [Redacted]  
[Redacted]  
[Redacted]

DECISION

MPA/158259

**PRELIMINARY RECITALS**

Pursuant to a petition filed June 12, 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 (Division or DHCAA) in regard to Medical Assistance (MA), a hearing was held on July 29, 2014, by telephone.

The issue for determination is whether the Division correctly denied a prior authorization request for 12 weeks of occupational therapy (OT) services.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[Redacted]  
By: [Redacted] mother  
[Redacted]  
[Redacted]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703  
By written submission of Mary Chucka, OTR  
Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Green County. She is certified for MA.

2. On April 21, 2014, a prior authorization request (#...166) was submitted on the petitioner's behalf for OT services. Service was requested at the level of once weekly for 12 weeks, beginning April 18, 2014, and at a cost of \$6,670.00. Following a re-submission, the request was denied on May 15, 2014.
3. The Division's basis for denial was that the requested service was not medically necessary. In particular, the Division was concerned that the evaluation preceding the request was insufficient because the evaluator did not observe the child eating or failing to eat.
4. The petitioner, age 2 ½, has diagnoses of a feeding problem and autistic disorder. She receives Birth to Three services, which include speech intervention and OT services. That service plan contains a section from March 2013 that noted that the petitioner weighed 20 pounds, was not gaining weight, was allergic to milk, and preferred a bottle. The petitioner is rigid in her daily routines and has difficulty tolerating changes in many areas, including feeding.
5. The OT evaluation for this prior authorization was done in April 2014. The evaluator noted that the petitioner is very active, and is frequently out of her seat at mealtime. The child was noted to eat dry cereals, with acceptance or occasional eating of macaroni and cheese, Cheeto puffs, bread, goldfish crackers, eggs, yogurt, pop tarts, bananas, strawberries, grapes, raw carrots, peeled/de-seed cucumbers, and lettuce. She will also drink liquid from a straw. During the evaluation, the child was observed to independently drink water from an open cup. However, ostensibly because the family did not bring preferred foods to the evaluation, the evaluator did not observe the child eating food. Nonetheless, the evaluator concluded that the child was demonstrating sensory processing differences that negatively affect her activities, including feeding. She further concluded that she should receive OT to increase tolerance of oral motor sensory input.
6. The short-term goals listed on the prior authorization request are the following:
  1. *Y will accept 4-5 new food presentations (mixed cereals, food cut into different pattern, etc.) 80% of the time. BASELINE: occurs less than 25% of attempts.*
  2. *Y will sit at table with family for 10-15 minutes with adaptations as needed (wiggle seat, timer). BASELINE: Sits less than 5 minutes at table.*
  3. *Y will tolerate touching 3-4 foods without tantrum 75%. (Baseline: refuses to touch new foods 50% of the time).*
  4. *Y will taste 1 new food weekly (BASELINE: refuses new foods).*
7. The evaluation did not include the petitioner's height and weight. At the time of hearing, the petitioner was 33 inches tall and weighed 25 pounds. This data places her below the 3<sup>rd</sup> percentile for height and just above the 3<sup>rd</sup> percentile for weight at age 33 months.

### DISCUSSION

Occupational therapy (OT), as defined at Wis. Admin. Code §DHS 107.17(1), is an MA-covered service, subject to prior authorization after the first 35 treatment days per spell of illness. Wis. Admin. Code §DHS 107.17(2). In determining whether to approve such a therapy request, the Division employs the generic prior authorization criteria found at §DHS 107.02(3)(e). Those criteria include the requirements that a service be a medical necessity, appropriate, and an effective use of available services. *Id.* The Division argues that the authorization criteria have not been satisfied for the reason given in Finding #3 above.

I concur with the Division's assessment that the evaluation was insufficient to support approval of 12 weeks of OT. The evaluator did not observe the child eat, attempt to eat, or fail to eat. How can it be known that the skills of an occupational therapist are needed to rectify whatever the problem is? It might just as easily be the domain of a nutritionist or autism therapy worker. Also, the child's weight is not out of line with her small stature. The child is not refusing all nutrition. The petitioner has not met her burden of establishing, by a preponderance of the credible evidence, that the requested OT services are a medical necessity at this time.

### **CONCLUSIONS OF LAW**

1. The Division correctly denied this prior authorization request for OT services.

**THEREFORE, it is**

**ORDERED**

That the petition 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 2nd day of September, 2014

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\sNancy J. Gagnon  
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 September 2, 2014.

Division of Health Care Access and Accountability