



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

In the Matter of:

██████████
c/o ██████████
2875 South 93rd St
West Allis, WI 53227

DECISION

MPA/158511

PRELIMINARY RECITALS

Pursuant to a petition filed June 23, 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 [“DCHAA”] in regard to Medical Assistance [“MA”], a Hearing was held via telephone on August 5, 2014.

The issue for determination is whether DHCAA was correct to deny Prior Authorization [“PA”] for MA payment for Physical Therapy [“PT”] for petitioner.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████ (not present at August 5,
2014 Hearing)
c/o ██████████
██████████
██████████

Represented by:

██
██
██

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Pamela J. Hoffman, PT, DPT, MS
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

OTHER PERSON PRESENT:

██████████ Physical Therapist

ADMINISTRATIVE LAW JUDGE:
 Sean P. Maloney
 Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (29 years old) is a resident of Milwaukee County, Wisconsin.
2. Petitioner has diagnoses of Cerebral Palsy ["CP"].
3. On April 24, 2014 petitioner's provider, New Berlin Therapies, S.C. of New Berlin, Wisconsin, requested PA (PA # [REDACTED] dated April 24, 2014) for MA coverage of PT for petitioner at the rate of 2 sessions per week for 26 weeks for 60 minutes each session with a requested start date of May 21, 2014 at a total cost of \$11,700.00.
4. On June 4, 2014 DHCAA denied PA # [REDACTED]; DCHAA sent a letter to petitioner dated June 4, 2014 and entitled *BadgerCare Plus Notice of Appeal Rights* informing him of the denial.
5. Petitioner has been receiving PT services continuously since December 2012 (a total of 116 sessions from December 2012 to May 2014); during this time petitioner has also received numerous other services to address his condition including oral baclofen, botox injections, a Home Exercise Program ["HEP"] and Range Of Motion ["ROM"] exercises (both often integrated into other activities) addressing (among other things) Standing Pivot Transfers ["STP"] administered by a "very experienced" "very involved" and "very supportive" caregiver who does a "magnificent job" (petitioner currently receives 5.25 hours of Personal Care Worker ["PCW"] services per day), use of a stander routinely (almost daily), modified Zumba classes, shoe lift, Ankle Foot Orthotics ["AFO"], and a new non-folding lightweight wheelchair (the new wheelchair originally had solid fixed foot plate which interfered with pivot transfers, this has now been corrected).
6. Petitioner's therapy goal is to be able to actively pivot transfer and maintain a standing position for up to 2 minutes with mild to moderate assist; he has achieved about 75% of that goal.
7. Petitioner has made progress since December 2012; he can now do a standing pivot transfer with some assist (in December of 2012 he was a total mechanical lift) but cannot yet consistently stand for 2 minutes.

DISCUSSION

By law, MA pays only for medically necessary and appropriate health care services when provided to currently eligible MA recipients. Wis. Admin. Code §§ DHS 107.01(1) & 107.17(1) (February 2014); See also, Wis. Stat. §§ 49.46(2) & 49.47(6)(a) (2011-12). In order for a service to be *medically necessary* it must meet several specific requirements. See, Wis. Admin. Code § DHS 101.03(96m) (December 2008). As with any eligibility denial, the burden is on petitioner to show that he is eligible for the requested services. *Lavine v. Milne*, 424 U.S. 577, 583-584 (1976). Petitioner has failed to do so.

One of the requirements for *medical necessity* is that the service must be 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)(b)9. (December 2008). Another is that the requested service must be cost-effective compared to an alternative medically necessary service which is reasonable accessible to the recipient. . Wis. Admin. Code § DHS 101.03(96m)(b)8. (December 2008). In this case petitioner has failed to show that the requested PT IS most appropriate supply or level of service and has also failed to show that the

requested PT cost-effective compared alternative services. This is because petitioner has failed to provide sufficient evidence to show what part, if any, of the progress he has made is due to PT and not due to other services he is receiving (such as the HEP and ROM administered by his PCW). More importantly, petitioner has failed to provide sufficient evidence to show why continued PT is necessary and to show why he cannot continue to make progress without PT based on the other services he is receiving (such as the HEP and ROM administered by his PCW).

CONCLUSIONS OF LAW

For the reasons discussed above, DHCAA was correct to deny PA for MA payment for PT for petitioner.

NOW, THEREFORE, it is ORDERED

That the petition for review herein be and the same is hereby 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 12th day of August, 2014

\sSean P. Maloney
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 August 12, 2014.

Division of Health Care Access and Accountability