



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

In the Matter of

██████ ██████
c/o ██████ ██████
████████████████
████████████████████

DECISION

MPA/158887

PRELIMINARY RECITALS

Pursuant to a petition filed July 09, 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 August 19, 2014, at Barron, 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:

██████ ██████
c/o ██████ ██████
████████████████
████████████████████

█

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 Barron County.

2. On May 5, 2014, the petitioner with Lakeview Medical Center requested 16 weekly speech and language therapy sessions beginning on May 9, 2014, at a cost of \$3,200. The petitioner has received the sessions.
3. The petitioner is a 15-year-old boy diagnosed with ADHD, anxiety, and high-functioning autism.
4. The petitioner has been tested with the Clinical Evaluation of Language Fundamentals-5. He is in the 0.1 percentile for pragmatics profile; the first percentile for word classes, recalling sentences, and formulated sentences; the second percentile for following directions, understanding spoken paragraphs, and sentence assembly; and in the 16th percentile for semantic relationships. His Core Language Score and Index is in the first percentile. This includes being in the second percentile in the receptive language index and the 0.2 percentile in the expressive language index. He was in the 0.5 percentile of the language content index and the 0.3 percentile of the language memory index. His reading comprehension score is in the second percentile and his structured writing score is in the 0.1 percentile.
5. The petitioner usually has no trouble articulating words he knows.
6. The petitioner has an individualized education plan through his school district. His school accommodates him by allowing him to be read to and to retake tests. He is in regular classes four periods a day. He participate in course for social thinking five days a week. He does not receive special education that specifically addresses speech and language deficits. His I.E.P. includes the following goals:
 - a. [He] will increase his reading comprehension to a lexile from 884 to 984 or higher on two consecutive measures using the Scholastic Reading Inventory.
 - b. [He] will increase his written language skills as measured by the benchmarks below:
 - i. Given a topic sentence, [he] will independently, using a writing structure (sentence starters), add 3 supporting sentences that support the topic in a paragraph on 4 out of 5 times during one school quarter.
 - ii. [He] will use 2 transition words within his paragraph on 4 out of 5 times during one school quarter.
 - iii. [He] will write a four to five sentence paragraph, without a sentence structure (sentence starters) by term 4, 100% of the time.
7. The petitioner participates in Reading 180® at school. This is a reading intervention program designed to help students at least two years below grade level.
8. Lakeside Medical's plan is to target the petitioner's expressive and receptive language skills. Its current short-term goals are as follows:
 - a. [He] will tell at least 2 different meanings for multiple meaning words (homonyms, heteronyms, homophones, etc.) at least 90% of the time.
 - b. [He] will use words from the above goal to tell at least 2 different sentences using multiple meaning words (homonyms, heteronyms, homophones, etc.) at least 90% of the time.
 - c. [He] will be able to correctly form a sentence when given a group of words to demonstrate understanding of word order and basic sentence structure at least 90% of the time.
 - d. [He] will identify and use regular and irregular verbs, adverbs, prepositions, and coordinating conjunctions within a sentence structure at least 90% of the time given faded cues and prompts.
 - e. [He] will formulate sentences to demonstrate correct use of subject-verb agreement within sentence structure at least 90% of the time given faded cues and prompts.

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). When determining whether a service is necessary, the Division must review, among other things, whether the service is medical necessary, the appropriateness of the service, the cost of the service, the effective and appropriate use of available services, and the professional acceptability of unproven or experimental care, as determined by consultants to the department. Wis. Admin. Code, § DHS 107.02(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. 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, together with his provider, Lakeview Medical Center requested 16 weekly speech and therapy sessions at a cost of \$1,768. The Office of Inspector General denied the request, primarily because the proposed therapy duplicates instruction he already receives through this school district. . . .

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 providers 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 provider can accomplish what he 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 by the preponderance of the credible evidence that any requested therapy is necessary.

The petitioner has several diagnoses, including ADHD and high-functioning autism. He clearly has difficulty with basic language skills. Standardized testing places him at or below the 2nd percentile in areas ranging from verbal and reading comprehension to structured writing and language. He does not have any problem articulating words that he knows. Lakeside Medical's plan is to target his expressive and receptive language skills. It includes the following goals:

1. [He] will tell at least 2 different meanings for multiple meaning words (homonyms, heteronyms, homophones, etc.) at least 90% of the time.
2. [He] will use words from the above goal to tell at least 2 different sentences using multiple meaning words (homonyms, heteronyms, homophones, etc.) at least 90% of the time.
3. [He] will be able to correctly form a sentence when given a group of words to demonstrate understanding of word order and basic sentence structure at least 90% of the time.
4. [He] will identify and use regular and irregular verbs, adverbs, prepositions, and coordinating conjunctions within a sentence structure at least 90% of the time given faded cues and prompts.
5. [He] will formulate sentences to demonstrate correct use of subject-verb agreement within sentence structure at least 90% of the time given faded cues and prompts.

This is similar to what his school district provides. Although he is not currently receiving speech therapy through his school district, he does have an individualized education plan that seeks to improve his language skills. It includes the following goals:

1. [He] will increase his reading comprehension to a lexile from 884 to 984 or higher on two consecutive measures using the Scholastic Reading Inventory.
2. [He] will increase his written language skills as measured by the benchmarks below:
 - a. Given a topic sentence, [he] will independently, using a writing structure (sentence starters), add 3 supporting sentences that support the topic in a paragraph on 4 out of 5 times during one school quarter.
 - b. [He] will use 2 transition words within his paragraph on 4 out of 5 times during one school quarter.
 - c. [He] will write a four to five sentence paragraph, without a sentence structure (sentence starters) by term 4, 100% of the time.

At school, the petitioner participates in Reading 180®, a reading intervention program designed to help students at least two year below grade level.

There is no question that the petitioner requires help with his language skills. Nevertheless, not only are Lakeside's goals similar to those found in his IEP, but the focus of its therapy is on academic topics taught in school from first grade through high school graduation by teachers trained to do so. Given the similarity between the two sets of goals and the academic nature of the requested therapy, in order to avoid duplication of services, Lakeview's therapist must demonstrate that she has special skills that will allow her to impart this knowledge significantly better than the petitioner's teachers can. The petitioner's parents testified that his school has not met his needs and that private therapy has helped him. They testified believably. Nevertheless, as explained, the petitioner has the burden of proof. His speech therapist is undoubtedly qualified, but for service to have medical value, as is required by Wis. Admin. Code, § DHS 101.03(96m)(b)5, the therapist must demonstrate not only that she has some skill not held by persons outside her field, but that she uses that skill to perform the requested therapy. For example, although a mechanic has special knowledge about cars, one would not hire him to fill the car's gas tank, even though he is certainly qualified to do so. If the therapist intends to use anything other than normal academic techniques to improve the petitioner's language skills, there was no evidence of this presented at the hearing. Because the petitioner's therapist has not demonstrated that her skills are needed, the requested therapy is not medically necessary. Therefore, the Office of Inspector General correctly denied the request.

CONCLUSIONS OF LAW

The petitioner has not shown by the preponderance of the evidence that the requested therapy is 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 12th day of September, 2014

\sMichael D. O'Brien
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 September 12, 2014.

Division of Health Care Access and Accountability