



FH

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

In the Matter of

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/158949

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 Alma, Wisconsin.

The issue for determination is whether the requested occupational therapy is medically necessary.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
c/o [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:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Buffalo County.

2. On May 8, 2014, the petitioner with [REDACTED] [REDACTED] [REDACTED] [REDACTED] requested 26 weekly occupational therapy sessions at a cost of \$11,128. The Office of Inspector General denied the request on June 4, 2014.
3. The petitioner is an eight-year-old girl diagnosed with delayed milestones and Dandy Walker Syndrome with congenital hydrocephalus.
4. The petitioner received occupational therapy from March 2009 through October 2011 and from February 2013 through May 2014.
5. The petitioner requires assistance dressing and eating. She has trouble controlling liquids in her mouth, which poses a risk of choking.
6. The petitioner generally moves about in a wheelchair and uses an upright mobile stander at school for up to 20 minutes per day.
7. [REDACTED] [REDACTED] set the following goals for the petitioner:
 - a. Will demonstrate ability to tall kneel, 80% of the time w/out loss of balance.
 - b. Will maneuver self on/off furniture, 80% of time with stand by assistance for safety if needed.
 - c. Will demonstrate adequate sitting balance and posture a. In water on step; b. on child-sized chair, with active weight bearing through lower extremities, 80% of time.
 - d. Will demonstrate reciprocal lower extremity movement while engaged in water activities, 80% of time.
 - e. Will demonstrate differentiation of lower body and upper body while engage in a. water activities, b. movement activities, 80% of time.
 - f. While engaged in water activities, will demonstrate trunk a. rotation, b. strength, flexion/extension for postural stability and sitting balance, 80% of the time.
 - g. Will demonstrate core strength and endurance to participate in water activities for duration of session, 80% of time.
 - h. Will demonstrate adequate neck strength when prone over swim noodle by maintaining neck extension as to not put face in water, 80% of time.
 - i. Will increase UE and LE strength/endurance when engaged in a. water activities; b. floor activities, c. standing/ambulation activities, 75% of time.
 - j. Will cruise edge of pool a. in standing, b. kneeling, with appropriate side-stepping pattern, 75% of time.
 - k. Will demonstrate flexion of a. spine, b. pelvis while engaged in water activities, 80% of time.
 - l. Will maintain a prone or supine, b. sitting balance on large roller for 1-2 minute duration w/out assistance, 80% of time.
 - m. Will maintain upright posture with life jacket and with minimal assistance, 80% of time to increase balance and body awareness.
8. [REDACTED] [REDACTED] reports that the petitioner has regressed in meeting all of her goals except the last. That goal lists her baseline as 0% and her current ability as of May 2014 as “able to maintain for 30 seconds to 1 minute duration.” Only one of the other listed goals indicates her current ability. Goal C indicates that she maintains her balance on a step in water for one to two minutes and for 10 seconds to one minute on a child-sized chair. In October 2013, she could maintain her balance in water for three to five minutes and two to three minutes on a chair.

DISCUSSION

Medical assistance covers occupational therapy when the recipient proves that it will effectively treat her disability. The petitioner is an eight-year-old girl diagnosed with hydrocephalus. She received occupational therapy on and off for several years to improve her strength, coordination, and flexibility.

The Office of Inspector General denied her latest request filed in May 2014 because it contends that her provider has not demonstrated that its program will improve her ability to care for herself and because there is no proof that past therapy has led to improvements.

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 Division must review, among other things, the medical necessity, appropriateness, and cost of the service, the extent to which less expensive alternative services are available, and whether the service is an effective and appropriate use of available services. Wis. Admin. Code, § DHS 107.02(3)(e)1.,2.,3.,6. and 7. A service is “medically necessary” if it is “[r]equired to prevent, identify or treat a recipient's illness, injury or disability.” Also, the service must also meet a number of standards that ensure that public funds pay for services that are proven, basic, and useful. The standards are that the service:

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)

Because of her disability, the petitioner usually uses a wheelchair and needs help dressing herself and eating. Much of the proposal by ██████████ ██████████, the treating therapist from ██████████ ██████████, consists of activities meant to improve the petitioner's balance, coordination, strength, and flexibility. Performing these activities might improve her ability to sit and move around, but there is no evidence that they will allow her to dress or eat without assistance. The Office of Inspector General requested that Ms. ██████████ reevaluate her goals to include more functional outcomes. She responded with a statement that could apply to almost any recipient: “[The petitioner's] goals are related to functional self-cares. The therapist has developed motor goals, as it is essential for [the petitioner] to develop body awareness, balance and coordination, and postural control to ensure effective and safe completion of self-cares with the least amount of assistance...” This, in essence, states the rather obvious truth that coordinated people can take care of themselves better than uncoordinated people. But different people need different treatment to bet perform daily tasks. Before the medical assistance program spends \$11,000 on therapy, it rightfully expects a proposal that is geared more toward the recipient's specific needs. This proposal does not meet that expectation.

And even if the petitioner could justify the state's spending over \$11,000 for a half a year of therapy that does not treat two significant deficits, she must demonstrate that the therapy will effectively treat her the problems it is designed to treat. To ensure that therapy effectively treats a recipient, Medicaid rules deny further therapy to those who have not made progress toward measurable goals in the previous six months:

Extension of therapy services shall not be approved beyond the 35-day per spell of illness prior authorization threshold [if]...[t]he recipient has shown no progress toward meeting or maintaining established or 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.

Wis. Admin. Code, § DHS 107.17(3)(e)1.

The petitioner received occupational therapy from March 2009 through October 2011 and from February 2013 through May 2014, when she submitted her current request. The request indicates that she has regressed in all but one of the 13 areas for which a goal is listed. That goal lists her baseline as 0% and her current ability her ability as of May 2014 as "able to maintain for 30 seconds to 1 minute duration." Only one of the other listed goals indicates her current ability. Goal C indicates that she maintains her balance on a step in water for one to two minutes and for 10 seconds to one minute on a child-sized chair. In October 2013, she could maintain her balance in water for three to five minutes and two to three minutes on a chair. There is at least one extenuating circumstance involved in this regression: she had a baclofen pump removed before her therapist submitted the current proposal. Still, without some measurement of her ability in the remaining 11 areas, there is no way to determine whether Ms. [REDACTED]'s assertion that the regression is due to the removal of the pump is credible. I assume there is some amount of decline that can generally be attributed to the removal of this type of pump. Was the petitioner's decline greater or less than this? In addition, it would be helpful to have objective measurements of her ability just before the pump was removed. If the decline had already begun, it would undermine her arguments. Ms. [REDACTED] should provide measurements such as this because she and the petitioner have the burden of proving that therapy is necessary.

They have not met their burden because they have not shown that, even if one allows for the extenuating circumstance of the removal of the baclofen pump, the petitioner would have shown any improvement in the six months before her latest request. Nor have they shown that the proposal itself is a cost-effective means of improving her ability to function. Therefore, the Office of Inspector General correctly denied the request.

CONCLUSIONS OF LAW

The requested therapy is not 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 30th day of September, 2014

\sMichael D. O'Brien
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 30, 2014.

Division of Health Care Access and Accountability