



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION

MPA/158997

PRELIMINARY RECITALS

Pursuant to a petition filed July 11, 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 September 29, 2014, at Appleton, Wisconsin.

The issue for determination is whether the Department erred in its denial of PA request # [REDACTED].

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

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Outagamie County.
2. Petitioner has severe cerebral palsy.

3. Petitioner has been receiving OT for several years.
4. The provider filed PA request # [REDACTED] for occupational therapy on May 27, 2014.
5. The request was denied on June 27, 2014.
6. Petitioner filed a timely appeal.

DISCUSSION

OT is covered by MA under Wis. Adm. Code §DHS 107.17. Generally OT is covered without need for prior authorization for 35 treatment days, per spell of illness. Wis. Adm. Code §DHS 107.17(2)(b). After that, prior authorization for additional treatment is necessary. If prior authorization is requested, it is the provider's responsibility to justify the need for the service. Wis. Adm. Code §DHS 107.02(3)(d)6. In reviewing a PA request the DHCAA must consider the general PA criteria found at §DHS 107.02(3) and the definition of "medical necessity" found at §DHS 101.03(96m). §DHS 101.03(96m) defines medical necessity in the following pertinent provisions:

"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; ...
 3. Is appropriate with regard to generally accepted standards of medical practice; ...
 6. Is not duplicative with respect to other services being provided to the recipient;
 8. ...[I]s 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.

The DHCAA denied the request primarily because the evaluation did not show the medical need for the services. The consultant argued the same point three different ways, essentially that petitioner has not showed sufficient progress or improvement in order to justify continued therapy. Additionally, she point to a lack of support in the documentation to find such progress. The consultant notes an absence of objective and quantifiable measures indicating progress over time. The consultant also argues that functional progress is not shown in the supporting documentation.

Significantly, it is the burden of the petitioner and his provider to establish medical necessity and the other criteria for PA approval.

Petitioner first argued that MA has not actually paid for all previously approved OT sessions and her private insurance has paid for some. This is not relevant to the determination of whether the sessions at issue are medically necessary. It is relevant, however, that he has been receiving services for a long period of time.

Petitioner also argued that due to his condition, progress is very slow. Petitioner explained, however, that progress has been shown. She did not point to any specific goals that have been met or quantifiable measures that indicate such progress. These were merely conclusory statements. Petitioner did not present any testimony of a therapist or medical professional. Petitioner did submit a letter from his therapist and physician. However, this letter did not address the lack of progress argued by the Department in its August 18, 2014 letter. This is surprising because the letter from the therapist was written after the Department's letter and the hearing did not occur until a month later. Petitioner could have sought more direct rebuttal to the Department's position.

CONCLUSIONS OF LAW

The Petitioner has not established the cost effectiveness, appropriateness, and medical necessity of the requested OT.

THEREFORE, it is

ORDERED

That this 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 October, 2014

\sJohn P. Tedesco
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 October 30, 2014.

Division of Health Care Access and Accountability