FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]
c/o [redacted]
[redacted]

DECISION

MPA/159163

PRELIMINARY RECITALS

Pursuant to a petition filed July 18, 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 telephonic hearing was held on September 04, 2014, at Green Bay, Wisconsin.

The 13 year old petitioner, [redacted], was represented by the program manager at Family Services of Northeast Wisconsin during and after the hearing. During that hearing, petitioner's representative requested that the record be held open for documents to be submitted to the Division of Hearings and Appeals (DHA), and then for those documents to be sent to the Office of the Inspector General (OIG) for a reconsideration decision with an opportunity for a reply by Ms. [redacted]. During the hearing, Ms. [redacted] indicated that three months of CADT services by Family Services of Northeast Wisconsin have already been provided to the petitioner since the May 15, 2014 PA was submitted to OIG.

This Administrative Law Judge (ALJ) sent a September 22, 2014 cover letter to Ms. [redacted] at the Office of the Inspector General (OIG) with the cover letter of Ms. [redacted] along with a copy of the 70 pages of documents which were received at DHA. In that same letter, this ALJ requested that Ms. [redacted] review the enclosed 70 pages of documents, and submit a detailed reconsideration summary to the Division of Hearings and Appeals by October 6, 2014 with a copy of that reconsideration summary letter to be sent to the petitioner's representative. The petitioner's representative requested and was granted until October 16, 2014 to submit to DHA any response to Ms. [redacted]'s reconsideration summary. OIG timely submitted its reconsideration (marked Exhibit 4) to DHA and petitioner, and Ms. [redacted] timely submitted her response (marked Exhibit 5) to DHA and OIG. Both documents are received into the hearing record.

The issue for determination is whether the Department correctly denied the petitioner's prior authorization (PA) request for Child/Adolescent Day Treatment (CADT) services for the petitioner from May 19, 2014 to August 19, 2014, due to not cost effective and appropriate when less expensive and appropriate services were available to meet petitioner's medical needs.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[redacted]
c/o [redacted]
[redacted]

Petitioner's Representative:

[redacted], program manager
Family Services of Northeast Wisconsin
[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: [redacted] Crinion, RN
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:
Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a 13 year old resident of Brown County who resides with his grandmother and mother, two sisters, a five year old brother, and a 33 year old uncle.

2. Petitioner is diagnosed with a mood disorder, oppositional defiant disorder, and psychosocial problems.

3. Previously Medicaid authorized CADT services from the same provider (Family Services of Northeast Wisconsin) from March 15, 2013 through October 16, 2013 (a total of 9 months). The provider documented that after discharge from CADT, the petitioner and his family were to receive intensive in-home mental health services from Innovative Counseling.

4. The provider and petitioner's mother failed to provide for petitioner the recommended intensive in-home mental health services after petitioner's October 16, 2013 discharge from the 9 month CADT services.

5. On March 4, 2014, Bellin Psychiatric Center admitted the petitioner to inpatient services He was discharged two day later, on March 6, 2014.

6. OIG asserted that the CADT services were not effective because petitioner again required inpatient psychiatric hospitalization on March 4, 2014, only four months after his 9 months of CADT. See Exhibit 1.

7. On March 27, 2014, psychiatrist, Dr. [redacted] performed a psychiatric evaluation of the petitioner. In that evaluation, Dr. [redacted] concluded that: a) there is nothing to suggest that petitioner has hallucinations, delusion, or paranoia; b) petitioner denied thoughts to harm self or others; c) no reports of any psychomotor agitation, or problems with sleep or appetite at that time; d) petitioner does have some oppositional defiant and disruptive behaviors, but nothing recently reported in the conduct area; e) attention and concentration was in the low to fair range, with insight and judgment likely in the poor range; f) petitioner is someone who if he does not like what he is doing usually figures out a way to get out of doing it; g) petitioner is not reporting anything that would impair his reality testing; h) petitioner's mother reported that he has no access to weapons; i) Dr. [redacted] did not provide a recommendation, referral or prescription for further CADT services for petitioner; j) Dr. [redacted] strongly recommended "an alternative learning school setting" for petitioner, stressing that: "keeping him in that environment, helping him work through it as well as learn additional coping skills through that process, will be the key to treatment . . ." See Exhibit 4.

8. CADT is a mental health service, and is NOT an alternative learning school setting.

9. The petitioner received weekly individual and family therapy from [redacted] as of March, 2014.

10. On June 17, 2014, the petitioner's provider, Family Services of Northeast Wisconsin, submitted to OIG a completed prior authorization (PA) request for Child/Adolescent Day Treatment (CADT) services for the petitioner requesting retroactive services from May 19, 2014 to August 19, 2014 at a requested cost of $14,625. See Exhibit 2. That PA request was not timely submitted by the provider to OIG to obtain prior authorization for CADT to begin as of May 19, 2014.

11. OIG sent a June 30, 2014 notice to the petitioner stating that his PA for CADT services were denied for the following reasons: a) the services requested are not medically necessary; b) past treatment history, outcomes and the documentation submitted with the PA request failed to justify that further CADT is the most cost effective and appropriate level of care or service that can safely and effectively meet petitioner needs; c) provider failed to justify why additional CADT services are more appropriate at this time than intensive in-home services, as intensive in-home services were determined to be appropriate four months previously, when the petitioner was discharged from CADT and was not provided that service; and d) less expensive alternative services are available for the petitioner to meet his psychiatric and medical needs.

12. The OIG sent an August 27, 2014 denial summary stating that the requested CADT services were not cost effective because the CADT services cost was approximately $9,515 while the MA reimbursement for six hours per week of Intensive In-Home Mental Health Services for the same time period is about $6,051, and two hours of outpatient individual and family psychotherapy each week by [redacted] is $1,456.

13. Petitioner's representative, [redacted], sent an October 3, 2014 e mail letter to OIG [redacted] indicating that the requested CADT services are being covered by petitioner's mother's primary insurance, UMR. As a result, the provider is only requesting a total of $585.54 which is the outstanding unpaid deductible not covered by UMR insurance.

14. Both parties submitted written closing arguments to DHA. See Exhibits 4 and 5. See above Preliminary Recitals.

DISCUSSION

The petitioner and his provider, Family Services of Northeast Wisconsin, seeks reimbursement for Child/Adolescent Day Treatment Services provided to the petitioner for the period of May 19, 2014 to August 19, 2014. The Office of Inspector General denied the request for a variety of reasons, including that the services were provided in part before the request was made and proper documentation was submitted, and the requested CADT was not cost effective, appropriate, or medically necessary.

The Office of Inspector General indicates that this is a "HealthCheck—Other Service" covered under Wis. Admin. Code, § DHS 107.22(4), a catch-all category applying to any service described in the definition of "medical assistance" found at 42 USC 1396d(a). Day treatment mental health services for children under 18 are more specifically covered by Wis. Admin. Code, Chapter DHS 40. To qualify for services, a child "must have a primary psychiatry diagnosis of mental illness or severe emotional disorder." Wis. Admin. Code, § DHS 40.08(3)(a). "Mental illness" is defined as a "medically diagnosable mental health disorder which is severe in degree and which substantially diminishes a child's ability to carry out activities of daily living appropriate for the child's age." Wis. Admin. Code, § DHS 40.03(16). Each child is evaluated by a psychologist or psychiatrist and has a treatment plan approved by a program. Wis. Admin. Code, §§ DHS 40.08(4) and 40.09(2)(c). Like any medical assistance service, it must be medically necessary, **cost-effective, and an effective and appropriate** use of available services. It must also meet the "limitations imposed by pertinent…state…interpretations." Wis. Admin. Code § DHS 107.02(3)(e)1.,2.,3.,6., 7, and 9. Wis. Admin. Code.

"Medically necessary" is defined in Wis. Admin. Code § DHS 101.03(96m) as 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.

On June 17, 2014, Family Services of Northeast Wisconsin submitted to OIG the complete PA request for CADT services for the petitioner requesting retroactive services from May 19, 2014 to August 19, 2014 at a requested cost of $14,625. See Exhibit 2. In her August 27, 2014 denial summary, Ms. [redacted] correctly argued that the provider's PA request was late, and was submitted about three months after the date of CADT referral and prescription, and about four weeks after the requested start date of CADT services for petitioner of May 19, 2014. See Exhibit 1.

Wis. Admin. Code, § DHS 107.02(3)(c) states: "If prior authorization is not requested and obtained **before** a service requiring prior authorization is provided, reimbursement shall not be made except in extraordinary circumstances such as emergency cases where the department has given verbal authorization for a service." This rule is not absolute. Wis. Admin. Code, § DHS 106.03(4)(a), which is found in the chapter in the administrative code pertaining to the provider's rights and responsibilities, allows an exception to this general rule "[w]here the provider's initial request for prior authorization was denied and the denial was either rescinded in writing by the department or overruled by an administrative or judicial order." In this case, petitioner's provider did not timely submit its PA for petitioner, and did not obtain timely verbal authorization for CADT services for petitioner.

This rule is needed because it can often take weeks or months for the Division to review requests for needed therapy. This especially creates problems if the request is for continuing or follow-up services and the lack of approval can interrupt ongoing treatment. But the preferred method is for the Office to review the request before services begin because it, unlike the Division of Hearings and Appeals, has medical training in the area under review that allows it to provide an expert opinion on whether the service is necessary. When reviewing a matter in which the services begin before being approved, Hearings and Appeals must look at all of the circumstances of the case.

Even if this PA request had been filed on time, the petitioner has not met his burden of showing that this further CADT PA request is cost-effective, appropriate, and medically necessary treatment. The petitioner receives medical, psychiatric and social worker services. Furthermore, petitioner is not

receiving intensive in-home services or an alternative learning school setting, despite recommendations by Dr. [redacted]. See Findings of Fact #7, #8, and #11.

Petitioner's representative, [redacted], did establish in testimony during the hearing and in her abundant exhibits the petitioner's many mental health problems. However, such evidence did not establish that further CADT services were cost-effective or appropriate treatment for [redacted]. Moreover, [redacted] continued to require psychiatric hospitalization just four months after 9 months of CADT for urgent mental health circumstances. See Findings of Fact #6 - #4. There is no reliable medical evidence in the hearing record that his overall mental health and behavior has improved much from the CADT services provided at Family Services of Northeast Wisconsin. The petitioner was unable to refute with any convincing evidence that OIG incorrectly denied the petitioner's PA request for CADT services. In any case, as explained in Ms. [redacted]'s October 3, 2014 letter, the requested CADT services are being covered by petitioner's mother's primary insurance, UMR with the exception of only $585.54 (outstanding unpaid deductible not covered by UMR insurance). See Finding of Fact #13 above. In her October 15, 2014 responsive closing argument, Ms. [redacted] did not agree on behalf of OIG for payment of any of the requested $585.54. Accordingly, based upon the above, I conclude that the Department correctly denied the petitioner's prior authorization (PA) request for Child/Adolescent Day Treatment (CADT) services for the petitioner from May 19, 2014 to August 19, 2014, due to not cost effective and appropriate when less expensive and appropriate services were available to meet petitioner's medical needs.

CONCLUSIONS OF LAW

The Department correctly denied the petitioner's prior authorization (PA) request for Child/Adolescent Day Treatment (CADT) services for the petitioner from May 19, 2014 to August 19, 2014, due to not cost effective and appropriate when less expensive and appropriate services were available to meet petitioner's medical needs.

THEREFORE, it is **ORDERED**

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 1st day of December, 2014

_____

\sGary [redacted] Wolkstein
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 December 1, 2014.

Division of Health Care Access and Accountability
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