



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

In the Matter of:

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

DECISION

MPA/159652

PRELIMINARY RECITALS

Pursuant to a petition filed August 4, 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 September 18, 2014.

The issue for determination is whether DCHAA was correct to deny Prior Authorization [“PA”] for MA payment for Speech-Language Therapy [“SLT”] (and for an SLT evaluation) for petitioner.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED] (not present at
September 18, 2014 Hearing)

[REDACTED]
[REDACTED]
[REDACTED]

Represented by:

[REDACTED], petitioner’s
parents

[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Theresa Walske, MS, CC-SLP
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (11 years old) is a resident of Milwaukee County, Wisconsin.
2. Petitioner has been diagnosed with autism and mixed language disorder.
3. On May 30, 2014 petitioner's provider, [REDACTED], Wisconsin, requested PA ([REDACTED] dated April 24, 2014) for MA coverage of 1 sessions of SLT per week for 45 minutes each time for 52 weeks with a requested start date of June 16, 2014; it also requested PA for MA coverage of an April 24, 2014 SLT evaluation.
4. On July 1, 2104, after returning the PA to petitioner's provider for more information, DCHAA denied the PA for both the requested SLT and the requested SLT evaluation; DCHAA sent a letter to petitioner dated July 1, 2014 and entitled *BadgerCare Plus Notice of Appeal Rights* informing him of the denial.
5. A *Speech and Language Evaluation Report* following an April 24, 2013 evaluation shows that petitioner has receptive language skills at the level of 3 years 6 months to 3 years 11 months and expressive language skills at the level of 2 years 6 months to 2 years 11 months.
6. A *Speech and Language Evaluation Report* following an April 24, 2014 evaluation shows that petitioner has receptive language skills at the level of 3 years 6 months to 3 years 11 months and expressive language skills at the level of 2 years 6 months.
7. During the time period April 24, 2013 to April 24, 2014 petitioner received SLT 120 minutes per 5 day week at his school during the school year; he also received 9 hours per week of post-intensive Applied Behavioral Analysis ["ABA"] theory in his home.
8. Petitioner's school district has identified petitioner as having communication deficits and is providing SLT to petitioner during the school year.

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). In this case petitioner has failed to show that the requested PT is most appropriate supply or level of service. This is because he has received SLT at school but, according to SLT evaluations in April 2013 and April 2014, he has made no progress (in fact, the evaluations show that he may have actually regressed in the area of expressive language). Therefore, in the absence of at least some progress, it would not be appropriate to approve additional SLT.

Another one of the specific requirements for *medical necessity* is that the requested service must be required to prevent, identify, or treat a recipient's illness, injury or disability. Wis. Admin. Code § DHS 101.03(96m)(a) (December 2008). As noted in the above *Findings of Fact*, petitioner's school district has identified petitioner as having communication deficits and is providing SLT to petitioner during the

school year. Therefore, it is unclear why an April 24, 2014 SLT evaluation was required. In the absence of any additional information PA for that evaluation cannot be approved.

Petitioner parents testified sincerely that petitioner is not able to communicate with them or with medical doctors concerning his health. This may be correct; nevertheless, PA cannot be approved in this matter for the reasons discussed above.

It is not necessary to address the other reasons DCHAA gave for denying PA.

CONCLUSIONS OF LAW

For the reasons discussed above, DHCAA was correct to deny PA for MA payment for SLT (and for an SLT evaluation) 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 30th day of September, 2014

\sSean P. Maloney
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