



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

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In the Matter of

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

DECISION

MPA/160289

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 27, 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 23, 2014, at Balsam Lake, Wisconsin.

The issue for determination is whether the petitioner is entitled to medical assistance reimbursement for occupational therapy.

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

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 Polk County.

2. On June 10, 2014, the petitioner with [REDACTED] [REDACTED] requested two one-hour sessions of occupational therapy per week for 26 weeks to treat a feeding disorder. The total cost of the requested therapy is \$16,224. After receiving additional information at its request, the Office of Inspector General denied the request on July 21, 2014.
3. The petitioner is five years old. She weighed 24 pounds, 13 ounces in June 2013, 25 pounds in December 2013, 25 pounds in June 2014, and 28 pounds at the time of the hearing.
4. The petitioner has congenital hydrocephalus that is controlled with a shunt and a repaired cleft palate. She has an oral aversion and gets much of her nutrition through a G-tube.
5. The petitioner previously received therapy from [REDACTED] in the Birth-to-Three program. During 2013 and 2014, she received at least 104 sessions of therapy from Ms. [REDACTED].
6. The petitioner has only the ulna bones in her forearms, missing the radial bone. She cannot bend her right elbow. She has no thumbs.
7. The petitioner has eaten 1 ½ cups of puree for over a year. She has begun adding some lumpy foods to the puree. She has made little other progress in her ability to eat table food in the six months before the current request.
8. As of June 2014, the petitioner could independently hold and drink water from a “straw cup.” [REDACTED] discontinued that goal.
9. [REDACTED]’s goals for the petitioner are that upon discharge she will:
  - a. Eat a greater variety of age appropriate table foods and drink an adequate amount of liquids for significant decrease in amount of tube feedings.
  - b. Increase amount of independence in use of eating utensils and cups.
10. The petitioner’s parents can carry out the current feeding techniques.

### DISCUSSION

The petitioner is a five-year-old girl with a variety of physical deformities that make it difficult for her to eat and drink regular food. She seeks reimbursement for 26 weeks of twice weekly occupational therapy at a cost of \$16,224 to improve her ability to eat a greater variety of table foods, drink enough liquids, decrease her tube feedings, and independently use of utensils and cups. Medical assistance requires prior authorization after 35 services. Wis. Admin. Code, § DHS 107.17(2)(b).

Eating table foods and drinking from a cup is unquestionably preferable to G-tube feedings, which is how the petitioner now derives much of her nutrition. But it is not enough for her provider to set goals; it must also demonstrate that its plan of care will enable her to meet those goals. This requires the provider to clearly state its proposal so that it can be objectively evaluated. Where the recipient has been receiving therapy, her progress must be objectively measured to determine whether the therapy is working and thus will likely lead to future improvement.

An evaluation of this sort is consistent with the general rules the Department must use when determining whether a service is necessary. Those rules require the Department to 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. Adm. Code, § DHS 107.02(3)(e)1.,2.,3.,6. and 7. To be “medically necessary,” a service must be consistent with the recipient’s symptoms or treatment of her disability and have “proven medical value.”

Wis. Admin. Code, § DHS 101.03(96m).

I have trouble following [REDACTED]'s plan of care because her information is scattered throughout her request and an attached form. Still, I will assume that she is qualified to provide this care because the Department has been approving it for several years now. The remaining question is whether she has shown that the therapy will cost effectively achieve its goals.

In 2010, when the petitioner began receiving therapy, she received all of her nutrition through a G-tube. Her parents testified that all of the progress listed in the "Functional Status After Treatment" section of the request refers just to progress she has made in the previous six months. That section states:

100% G-tube fed initially w/ no tolerance for oral feeding. Currently offered 3 oral feeds/day. Takes ½ - 1 ½ cups smooth/lumpy purees w. enhanced calories fed by family @ ea meal. Initially refused all liquids. Currently uses unlidded cup with assist of adult. Drinks from straw cup independently. Occas: uses small spoon between left 4<sup>th</sup> & 5<sup>th</sup> digits to self feed yogurt; holds sippy independently but does not drink adequately from it. Tastes a variety of soft and crunchy mechanical foods fed by therapist. Will tolerate item remaining in mouth w/ graded exposure in the particular item including some chewing & mvmt of bolus. Continues to limit swallow for "textures" (blocks with tongue) but does well with smooth purees. When does swallow a soft texture (i.e. soft small cracker piece she appears surprised and recovers quickly. Gagging reaction is decreasing.

Accepts having teeth brushed sometimes. Tries to wash/wipe hands/face/tray.

Continued dependence for utensil use and cup use during feeding because of limited bilateral hand skills and available adaptations. Holds light weight utensil primarily in her right hand using her little finger as her thumb, for a few bites of puree. Picks up finger foods independently to taste them.

The contention that all the petitioner's progress has occurred in the last six months contradicts the documented evidence because the June 2014 statement concerning her functional status is nearly identical to her December 2013 statement. One difference is that the earlier statement indicated that the purees were smooth rather than "smooth/lumpy," but by then she was already tasting a variety of crunchy foods, although she usually would not swallow anything but smooth textured food. The earlier report did not indicate that she used a straw but did indicate that she took three sips from an unlidded cup with assistance. Similarly, a June 2013 statement indicates that she was already taking "½ - 1½ cups thick purees/mashed foods w/ enhanced calories" and that she accepted a "variety of soft and hard mechanical foods fed by [a] therapist." Furthermore, it is unclear whether she has made all the progress listed in the latest report because her parents indicate that she is not drinking at all; [REDACTED] indicates that she ended a goal related to drinking from a "straw cup" because it was met.

The petitioner's parents also contend that the petitioner's need for therapy is also demonstrated by weight she has lost since her therapy has ended. But the documentation contradicts this alleged regression. Each request indicates that she has poor weight gain and that her weight is slowly increasing. The three requests indicate that she weighed 24 pounds, 13 ounces in June 2013, 25 pounds in December 2013, and 25 pounds in June 2014. This means that if her weight fell after her therapy ended in June, she would weigh less than 25 pounds. But her parents reported that at the time of the hearing she weighed 28 pounds.

The petitioner has received therapy from [REDACTED] for several years. In 2013 and 2014 she received at least 104 occupational therapy sessions. Throughout this period, her parents have attended the sessions and worked with the therapist. I assume with her training and practice, Ms. [REDACTED] has knowledge that lay persons, including the petitioner's parents, lack. But nothing in the request or evidence indicates that the particular techniques Ms. [REDACTED] uses have changed throughout this period or that lay persons, such as the petitioner's parents, who have had several years to learn the techniques cannot also do them. The sessions cost \$16,224, the petitioner has shown little progress, and there is no evidence that her

parents cannot teach her the skills she is now learning from the therapist. Based upon this, I find that her requested therapy is not medically necessary and uphold the agency's denial.

**CONCLUSIONS OF LAW**

The requested occupational 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 6th day of November, 2014

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\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 November 6, 2014.

Division of Health Care Access and Accountability