



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted case name]

DECISION

MPA/160373

PRELIMINARY RECITALS

Pursuant to a petition filed September 03, 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 October 23, 2014, at Shell Lake, Wisconsin. A hearing scheduled for September 24, 2014, was rescheduled at the petitioner's request. A hearing scheduled for September 24, 2014, was rescheduled at the petitioner's request.

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 petitioner name]

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 (CARES # [Redact]) is a resident of Washburn County who lives with his foster parents.
2. On June 20, 2014, the petitioner with [Redact] Hospital requested an occupational therapy evaluation and 11 weeks of therapy at a cost of \$6,956.80. [Redact] Hospital submitted additional information on June 23, 2014, and July 10, 2014. The Office of Inspector General denied the request on July 21, 2014.
3. The petitioner is a 10-year-old boy diagnosed with Asperger's and overall weakness.
4. The petitioner is near or above his grade level in all academic subjects except writing, where he is more than two grades behind.
5. [Redact] Hospital's occupation therapist treats the petitioner through his school district during the academic year.
6. The petitioner requested therapy to address weakness in his core and throughout his arms and legs.
7. [Redact] Hospital set the following short-term goals for the petitioner:
 - a. Increase core strength as demonstrated by the ability to sit on a therapy ball for 5 minutes to complete a table top task without using UEs to support in preparation for improved fine motor control during functional tasks.
 - b. Increase B UE strength as demonstrated by the ability to lay prone on elbows for 7 minutes with minimal verbal cues for increased shoulder girdle strength.
 - c. Improve fine motor coordination as demonstrated by the ability to do dressing fasteners for increased independence with ADL.
 - d. Improve L hand strength in order to improve writing ability for school success as well as increased independence with ADL such as dressing and grooming tasks to an age appropriate level for a 10 year old.
8. The petitioner's request does not measure his strength or coordination.
9. The petitioner's request does not indicate what specific techniques will be used to improve his strength and coordination so that he can write better.

DISCUSSION

The petitioner seeks occupational therapy twice a week for 11 weeks during the summer of 2014 to improve his writing skills. The cost of the proposed therapy is \$6,956.80. 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, whether the service is medical necessary, the appropriateness of the service, the cost of the service, and the effective and appropriate use of available services. Wis. Admin. Code, § DHS 107.02(3)(e). "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;
 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)

An effective occupational therapy proposal must follow several-step process. First, it must determine the nature of the recipient's disability and the limitations that disability places upon him. Second, it must set goals to help him overcome or live with his limitations. Third, it must have a treatment plan that has a realistic chance of accomplishing these goals. In order to determine whether the therapy meets these criteria, the provider must perform tests that consistently and accurately measure performance. And the treatment must actually require the services of an occupational therapist or it is not a cost-effective use of the medical assistance program's limited assets. If the therapy does not meet these criteria, it fails the medically necessary test because it is not consistent with the recipient's symptoms or with treatment of his disability.

The petitioner was diagnosed with Asperger's, weakness throughout his core and extremities, and poor fine motor control. He is in foster care; his parents see him sporadically. Medical notes included with the prescription for this therapy indicate that it is meant to treat "delay, poor strength." The request's short-term goals are to increase his core strength, increase his strength in both upper arms, improve his fine motor coordination, and to "[i]mprove L hand strength in order to improve writing ability for school success as well as increased independence with ADL such as dressing and grooming tasks to an age appropriate level for a 10 year old." At the hearing, the only evidence for the therapy pertained to improving his ability to write, so that is what I will limit this decision to.

Writing is undoubtedly a problem for him. Although he was near or above his grade level in most subjects and got mostly A's in most of his school subjects—both remarkable considering his inconsistent family life—he writes at a level about three years below what is expected of someone his age and grade. **Redact** Hospital attributes this at least partly to poor strength. This is a vague diagnosis because lack of strength can refer to any number of things. Pens and pens are not heavy, so I assume that his lack of strength pertains more to endurance than actual ability to lift these objects. But the request and evidence do not include a single objective measurement of the type of strength and endurance that could affect one's ability to write; without these measurements, it is difficult to judge in what particular areas the petitioner lacks the strength to perform these tasks. It could be his wrist, his fingers, his forearm, or some combination of these.

Nor does the request indicate what exercises make up the therapy used to improve his strength. Occupational therapists do have special skills, and part of these skills include adjusting the techniques as the therapy progresses. But there are some fairly simple exercises for increasing hand strength, such as squeezing a rubber ball. Without some evidence that the petitioner requires more than this, there is no evidence that a home exercise program cannot accomplish the same results more cheaply. A home exercise program would have been fairly simple to set up because **Redact** Hospital uses the same therapist to treat the petitioner as the school does.

The petitioner and **Redact** Hospital have the burden of proving by the preponderance of the credible evidence that he requires the requested therapy. **Redact** Hospital has identified a problem: his poor writing skills. But it has not identified what causes this problem in any but the most general terms. Without a more specific diagnosis, it would be impossible to determine whether its therapy will effectively treat him, even if the components of the treatment were known, which they aren't. Without knowledge of the treatment, it is impossible to determine whether the expense of a therapist is actually needed—especially for the relatively short period of the current request. The requested therapy may or may not have provided cost-effective help to the petitioner. But as the record stands now, I cannot objectively make that determination. Because the petitioner has the burden of proving that the therapy is necessary, I must uphold the Office of Inspector General's denial of it.

CONCLUSIONS OF LAW

The petitioner is not entitled to the requested occupational therapy because he has not proved by the preponderance of the credible evidence that it is 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 12th day of December, 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 December 12, 2014.

Division of Health Care Access and Accountability