



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

In the Matter of

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

DECISION

MPA/161013

PRELIMINARY RECITALS

Pursuant to a petition filed October 2, 2014, under Wis. Stat., §49.45(5), to review a decision by the Division of Health Care Access and Accountability (DHCAA) to modify a Medical Assistance (MA) prior authorization request for physical therapy (PT), a hearing was held on November 13, 2014, by telephone.

The issue for determination is whether the DHCAA correctly reduced the number of PT sessions authorized for petitioner.

PARTIES IN INTEREST:

Petitioner:

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

Respondent:

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

By: Written submission of Pamela J. Hoffman, PT Consultant

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a 4-year-old resident of Milwaukee County who receives MA.
2. Petitioner has a number of diagnoses including chromosomal duplication, seizures, ametropic amblyopia (a retinal disease resulting in reduced vision), toe walking, hypotonia (low muscle tone with reduced strength), autism, and mild Von Willebrand disease (a bleeding disorder).

3. Petitioner has received PT in a birth-to-three program. His status at that point was “Ambulating independently, stairs with assist.”
4. After concerns were raised about petitioner’s safety and balance, he then was granted four sessions of PT in October, 2013, and a second four sessions in December, 2013, all with [REDACTED], with goals of developing a home exercise program, walking more than one-half block, ascending and descending stairs, and running 45 feet without losing balance. He later was provided ankle-foot orthoses.
5. In July, 2014, petitioner was reported to walk independently and that he required minimal assistance on stairs.
6. On August 27, 2014, [REDACTED] requested authorization for 16 PT sessions beginning in late August, PA no. [REDACTED]. Goals include to ambulating up and down stairs and ambulating four blocks without fatigue. By a letter dated September 17, 2014, the DHCAA approved four sessions to set up and work on a home exercise program.
7. Petitioner’s impairments are listed in the PA request as “global muscle weakness evident by decreased endurance” and “poor safety awareness.”

DISCUSSION

Physical therapy is covered by MA under Wis. Admin. Code, §DHS 107.16. Generally it is covered without need for prior authorization (PA) for 35 treatment days, per spell of illness. Wis. Admin. Code, §DHS 107.16(2)(b). After that, PA for additional treatment is necessary. If PA is requested, it is the provider’s responsibility to justify the need for the service. Wis. Admin. Code, §DHS 107.02(3)(d)6. If the person receives therapy in school or from another private therapist, there must be documentation of why the additional therapy is needed and coordination between the therapists. Prior Authorization Guidelines, Physical, Occupational, and Speech Therapy, Topics 2781 and 2784.

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 interprets the code provisions to mean that a person must continue to improve for therapy to continue, specifically to increase the ability to do activities of daily living. In addition, at some point the therapy program should be carried over to the home, without the need for professional intervention.

In this case the DHCAA reviewer clearly is somewhat flustered by the request for PT. It is noted that petitioner's condition has not changed over time, and the therapists still are working on the same areas as in the past. There is no specific impairment being addressed; "global weakness" and "decreased endurance" are impossible to substantiate.

I am bothered by the open-endedness of this request. While 16 sessions are requested, there does not appear to be a plan in place or a prognosis of when the therapy would end. Even the letters submitted for the hearing say simply that therapy is needed, but without any specifics as to how the problems will be addressed and how long the services will be provided. Again, when petitioner was discharged from birth-to-three he could walk and could go up and down stairs with assistance. He has had a course of therapy since then in 2013, and now, in August, 2014, more therapy is being requested for essentially the same areas. I am troubled by petitioner's mother's response to my question of how petitioner has done since therapy ended, and she responded that his skills have worsened. If there is no carry over from the therapy, then the success of the therapy is called into question.

I am going to uphold the DHCAA's action. If petitioner truly needs additional therapy, the provider should read the November 7, 2014 case summary from the Department and address the concerns raised in it. My problem is that, even if I feel that petitioner would benefit from more PT, I have no idea how to fashion a remedy. Is 16 sessions enough? Less than 16? More? There is not enough specificity to determine the answers to these questions.

CONCLUSIONS OF LAW

The DHCAA correctly modified the PA request in this case to provide four PT sessions to work on a home program because there is insufficient evidence in the PA request to determine the need for or potential success of ongoing, open-ended PT services.

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 21st day of November, 2014

\sBrian C. Schneider
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 21, 2014.

Division of Health Care Access and Accountability