



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact
Redact Redact
Redact
Redact

DECISION

MPA/159902

PRELIMINARY RECITALS

Pursuant to a petition filed August 12, 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 October 01, 2014, at Oconto, Wisconsin.

The petitioner's father and mother, Redact and Redact, represented 7 year old Redact at that hearing. During that hearing, petitioner's representatives requested that the record be held open for documents to be submitted to the Division of Hearings and Appeals, 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 petitioner's parents.

This Administrative Law Judge (ALJ) sent an October 16, 2014 cover letter to Ms. Redact at the Office of the Inspector General (OIG) with a large packet of about 25 pages of documents that were received at DHA. In that same letter, this ALJ requested that Ms. Redact review the enclosed documents and letters, and submit a reconsideration summary to me at the Division of Hearings and Appeals by October 27, 2014 with a copy of that reconsideration summary letter to be sent to the petitioner's representatives, his parents. The petitioner's parents requested and were granted until November 7, 2014 to respond to Ms. Redact's reconsideration summary. See Exhibit A

Ms. Redact timely submitted a very well-written and organized (with table of contents) reconsideration to DHA and to petitioners' parents which is received into the hearing record as Exhibit B. Petitioner's parents timely submitted their November 3, 2014 reply to DHA and to Ms. Redact which is received into the hearing record as Exhibit C.

The issue for determination is the Department correctly modified (reduced) the petitioner's prior authorization (PA) for private speech therapy from once weekly for 26 weeks to 13 sessions, and then approved the reduced SLT sessions due to lack of established coordination of care or medical necessity.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact
Redact Redact
Redact
Redact

Representatives:

Redact and Redact, parents
Redact
Redact

Respondent:

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

By: Red Redact, speech language consultant
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 is a 7 year old resident of Oconto County who resides with his parents, Redact and Redact.
2. The petitioner is diagnosed with Autism Spectrum disorder, mood disorder, Attention Deficit Hyperactivity disorder, and oppositional defiant disorder. See October 30, 2014 letter by Redact MD.
3. The petitioner attends Oconto Falls School District where he receives academic and life skills instruction, speech and language therapy, occupational therapy, and physical therapy, as explained on his Individual Education Program (IEP).
4. The petitioner has been receiving intensive in-home Applied Behavior Analysis (ABA) services from Redact since August, 2013. The primary goals of ABA is to address petitioner's Autism and the behavioral problems resulting from his Autism. ABA does not include any licensed speech language pathologist, although it indirectly works on social skills, independent living skills with the use of improving overall communication skills. See November 3, 2014 letter by Redact ABA lead therapist and Redact, senior staff.
5. The petitioner's school speech language therapy with SLT Red Redact has been only once per week to address primarily social language, Redact, and following directions.
6. On or about June 12, 2014, the petitioner's provider, Redact, submitted a prior authorization (PA) request on behalf of the petitioner for once weekly Speech language therapy (SLT) for 26 weeks (beginning June 19, 2014) at a requested cost of \$5,593.80.
7. OIG speech language consultant, Red Redact, sent an August 22, 2014 letter to the petitioner stating that petitioner's PA request was reduced from once weekly SLT for 26 weeks to 13 sessions of SLT (for summer months when school not in session). The reasons for the reduction are the following: a) The private SLT PA request provided no documentation of coordination of care by the private speech language pathologist with the school SLP or the Autism service provider; b) the PA provided no confirmation of any active communication between the school SLP and the private SLP; c) the PA was approved for 13 weeks to provide funding for SLT during the summer months when school was not in session, and to allow the private SLT to coordinate services with the school SLP and in-home autism service providers; and d) in the absence of established coordination of care, the requested private SLT was not established to be medically necessary or appropriate.

8. The petitioner's parents have encountered ongoing problems with non-responsiveness by the school SLT, Re:Redact, with Ms. Redact not wanting to communicate with or coordinate speech language therapy goals with petitioner's private SLT, Redact.
9. During October, 2014, there has begun to be discussion between petitioner's school SLT and private SLT to begin to coordinate SLT to not duplicate areas of the speech therapy and to avoid overlapping of speech services. See November 3, 2014 letter by petitioner's parents and October 30, 2014 letter by Oconto DHSS coordinator, Redact.
10. In her October 27, 2014 reconsideration, Ms. Redact articulated her suggestion for the provision of private SLT services for the petitioner: "The parents' October 22, 2014 letter expressed concerns with services received by the school and in-home autism provider. Again, it is unclear why Redact and Redact are seeking additional Medicaid funding for speech and language therapy from an outside provider instead of sharing their concerns and working with the school and in-home autism provider so that the therapy being advocated for occurs in Redact's natural environment, not a therapy clinic."
11. The petitioner's representatives failed to establish with any reliable documentation the establishment of clear, specific coordination of care for petitioner's communication needs from his three providers.
12. The petitioner's private SLT needs to submit a new PA request to OIG with reliable evidence to document established "coordination of care" for petitioner's SLT services from Redact Re..., the School SLT, and the In-home Autism services.

DISCUSSION

Speech and language therapy is an MA-covered service, subject to prior authorization after the first 35 treatment days. Wis. Adm. Code § DHS 107.18(2). In determining whether to approve such a therapy request, the Bureau employs the generic prior authorization criteria found at § DHS 107.02(3)(e). Those criteria include the requirements that a service be medical necessary, appropriate, and an effective use of available services. "Medically necessary" services are those "required to prevent, identify or treat a recipient's illness, injury, or disability. Wis. Adm. Code § DHS 101.03(96m)(a).

Included in the definition of "medically necessary" at § DHS 101.03(96m)(b) are the requirements that services be of proven medical value or usefulness, that services not be duplicative of other services, and that services be cost effective when compared to alternative services accessible to the recipient. When speech therapy is requested for a school age child in addition to therapy provided by the school system, the request must substantiate the medical necessity of the additional therapy as well as the procedure for coordination of the therapies. Prior Authorization Guidelines Manual, Speech Therapy, page 113.001.02. It is up to the provider to justify the provision of the service. Wis. Adm. Code § DHS 107.02(3)(d)6.

During the fair hearing process, it is generally accepted that the state or county agency, as the party which has taken the action appealed from bears the burden of proof of the propriety of that action. *See State v. Hanson*, 98 Wis.2d 80, 295 N.W.2d 209 (Ct.App.1980). Like most public assistance benefits, however, the initial burden of demonstrating eligibility for any particular benefit or program at the operational stage falls on the applicant, *Gonwa v. Department of Health and Family Services*, 2003 WI App 152, 265 Wis.2d 913, 668 N.W.2d 122 (Ct.App.2003). In other words, it was petitioner's burden to demonstrate that he qualified for the requested continued speech and language services.

An applicant will need to demonstrate that the procedure for which he or she seeks approval is “medically necessary.” A “medically necessary” service is

[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;

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).

The crux of the Division’s denial of petitioner’s request is that petitioner has failed to establish coordination of care between the petitioner’s three providers or to establish the medical necessity or appropriateness of private speech therapy.

COORDINATION OF CARE.

Coordination of care has been a long standing requirement of the Forward Health program which is required for the benefits of the members. The professionals involved are required to exchange knowledge regarding a member’s care to understand past and present therapy strategies that provide success and facilitate continuity of care. Thus, in order to approve SLT funding, the private speech language therapist at Redact, must have documented coordination of care with the school speech therapist and Autism service provider.

It is the responsibility of the fee-for service provider to justify MA coverage of the service to the Division. The issue of duplication would likely be easily resolved if there was real coordination between the providers in the development of their treatment plans. Communication through a parent or occasional informal communication between providers is not sufficient. Based on the entire hearing record (including while the record was held open), I conclude that the private SLT provider has failed to present any reliable documentation of coordination with the school SLP or ABA. **When the goals of two or more providers of services are similar as they are here, there must be a clear showing that the therapists are coordinating them so there is not duplication.** See §HSS 107.02(3)(e)7.

There was no problem with duplication of private SLT efforts in the summer of 2014, as the petitioner did not have an opportunity to receive SLT from the school. As a result, the Department approved 13 sessions of SLT for the summer of 2014 because there was no issue of duplication of services.

Ms. [Redact] in her very detailed 14 page August 22, 2014 denial summary provided many reasons why the petitioner's representative failed to establish the medical necessary of the requested private speech therapy, as stated in Finding of Fact #7 above. The petitioner's representatives and the provider were unable to establish evidence to convincingly refute the reasons for denial in regard to petitioner's continued private speech and language therapy. Furthermore, Ms. [Redact] correctly referred to several prior DHA hearing decisions which are relevant to the instant case:

MPA-152579 and 143562 – “Furthermore, private therapists are expected to coordinate their services with other providers to avoid duplication. The petitioner and his provider have the burden of proof in this appeal. This means that to prevail they must present enough evidence to show that they meet the legal requirements for receiving speech therapy. If the provider submits no evidence of coordination, it is impossible to determine whether the petitioner meets the legal requirement that the requested therapy not duplicate other services he already receives.”

MPA-150465 - “. . . when speech therapy is requested for a school age child in addition to therapy provided by school system, the request must substantiate the medical necessity of the additional therapy as well as the procedure for coordination of the therapies. Prior Authorization Guidelines, Physical, Occupational, and Speech Therapy, Topics 2781 and 2784. It is up to the provider to justify the providing of the service per DHS 107.02(3)(d)6.

MPA- 144825 – “However, nothing in the prior authorization request suggest any coordination at all between the school and private therapists, nor is there any explanation that the school therapy is insufficient. Since Department policy requires coordination between private and school therapy as well as a distinction between them, I must conclude that the denial was correct.”

Ms. [Redact] correctly asserted that the lack of communication appears to have resulted in no consensus on a services plan by petitioner's providers or functional outcomes to be consistently addressed across services providers.

In her October 27, 2014 reconsideration, Ms. [Redact] articulated in part her recommendation for the provision of SLT services for the petitioner:

[Redact] is receiving therapy from three different providers to address his communication needs. The school professionals expect [Redact] will communicate using pictures in his natural environment of the school. The In-Home Autism Team expects [Redact] to master social communication in the natural environment of [Redact]'s home. The provider, [Redact], expects [Redact] will communicate using words in the contrived setting of a therapy clinic.

[Redact] and [Redact] and the provider are advocating for speech and language therapy in the only setting that is not [Redact]'s natural setting, [Redact]. The parents' October 22, 2014 letter expressed concerns with services received by the school and in-home autism provider. Again, it is unclear why [Redact] and [Redact] are seeking additional Medicaid funding for speech and language therapy from an outside provider instead of sharing their concerns and working with the school and in-home autism provider so that the therapy being advocated for occurs in [Redact]'s natural environment, not a therapy clinic.

It is the responsibility of the fee-for service provider to justify MA coverage of the service to the Division. In this case, the provider has failed to do so. While the petitioner's parents' efforts and desire for **Redact** to achieve as much progress as possible in his speech therapy is commendable, the petitioner has not established that the requested private SLT is medically necessary and not duplicative. Accordingly, for the above reasons, I conclude that the Department correctly modified (reduced) the petitioner's prior authorization (PA) for private speech therapy from once weekly for 26 weeks to 13 sessions and then approved the reduced SLT sessions due to lack of established coordination of care or medical necessity.

As dicta, the petitioner's parents may wish to have their private SLT provider submit a new PA to OIG which clearly documents the coordination of care, appropriateness, and medical necessity of the requested private speech therapy.

CONCLUSIONS OF LAW

The Department correctly modified (reduced) the petitioner's June, 2014 prior authorization (PA) for private speech therapy from once weekly for 26 weeks to 13 sessions during the summer months, and then approved the reduced SLT sessions due to lack of established coordination of care or medical necessity.

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 15th day of January, 2015

\sGary M. 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 January 15, 2015.

Division of Health Care Access and Accountability