



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION

MPA/161130

PRELIMINARY RECITALS

Pursuant to a petition filed October 06, 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 December 04, 2014, at Racine, Wisconsin.

The issue for determination is whether the Department of Health Services Division of Health Care Access and Accountability (DHS), correctly denied the request for speech/language services.

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: OIG by letter

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Racine County.

2. Petitioner is a five year old child with diagnoses of Spina Bifida, muscle weakness, paralysis of lower extremities, anatomical deformities in his spine, hips and feet, weakness due to mal-alignment in his trunk musculature and decreased upper body strength. He is prone to fractures in his legs. (Exhibit 8, pg. 1; Exhibit 7, pg. 7)
3. On August 11, 2014, [REDACTED] ([REDACTED]) submitted, on behalf of the Petitioner, a prior authorization request, seeking 13 sessions of Speech/Hearing therapy, at a cost of \$3,120.00. The Petitioner was expected to be seen once per week for 13 weeks. (Exhibit 5, pgs. 7 and 15)
4. The requested therapy was intended to address the Petitioner's speech and motor development which [REDACTED] described as, "significantly delayed". (Exhibit 5, pg. 11)
5. The goals of the requested therapy were stated as follows:
 - a. Through position and exercises, [Petitioner] will sustain /ah/ production for mean length of 7 seconds with minimal support and prompting (MPT ranges from 5 to 9 seconds for 5 year olds).
 - b. Sequence a series of 3 pictures with 80% accuracy with minimal support and assistance.
 - c. Explain the scene in individual scenes, post sequencing in 4 of 5 trials, independently.
 - d. Identify differences between 2 similar pictures with moderate support with 80% accuracy (addresses searching and attention to detail. Also setting foundation for awareness of appropriate pronoun usage.)
 - e. Find up to 2 objects in a group of 15 that match a simple given criteria (i.e. find all the items that fly) with 90% accuracy with min support and assistance.
 - f. Select or find only requested objects/items within a page search without selecting items not requested in 4 of 5 trials, independently (addresses systematic searching)
 - g. Identify errors within a simple picture in 4 of 5 trials with min. support. (Improves awareness of errors offline.)

(Exhibit 5, pgs. 15-17)
6. On September 8, 2014, DHS sent the Petitioner a notice advising him that the request for services was denied. (Exhibit 5, pgs. 17-20)
7. On September 4, 2014, DHS sent [REDACTED] notice of the same. (Exhibit 5, pgs. 21-22)
8. The Petitioner's father, on behalf of Petitioner, filed a request for fair hearing that was received by the Division of Hearings and Appeals on October 6, 2014. (Exhibit 1)
9. The Petitioner receives special education services from his school district that include speech/language therapy services. Petitioner receives school based therapy twice a week, 25 minutes per session. There is no indication that Petitioner received an extended school year, covering the summer months. (Exhibit 6, pg. 35)
10. Petitioner's IEP, which was created in January 2014, notes that the Petitioner, "has moderate decrease in overall receptive and expressive communication skills. He needs repetitions and modeling to complete simple tasks. He is highly distracted and needs redirecting during tasks as well..." (Exhibit 6, pgs. 30)
11. The goals for school-based therapy are:

- a. Demonstrate appropriate volume of speech 50% of the time during the structured and unstructured tasks with 1 cue given by completing breathing and volume exercises. (Exhibit 6, pg. 29)
- b. Increase his intelligibility of speech by correctly producing age appropriate phonemic sounds in words and phrases 80% of the time with modeling as needed. (Exhibit 6, pg. 28)
- c. Increase auditory comprehension skills to 80% accuracy level by
 - 1. Understanding quantitative concepts (one, some, rest)
 - 2. Understanding analogies (You sleep in a bed, you sit on a ____)
 - 3. Understanding negatives
 - 4. Understanding spatial concepts (in, on, out of, under, in back of, next to)
 - 5. Recall 2 pieces of information from a short story
 - 6. Answer wh questions

(Exhibit 5, pg. 27)

- d. Increase his expressive communication skills by completing the following 80% of the time:
 - 1. Labeling objects/pictures
 - 2. Stating function or action
 - 3. Use verb tense, present and past tense
 - 4. Ask simple questions

(Exhibit 5, pg. 26)

- e. Improve cognitive/readiness skills to include....
 - 1. Identifying objects based on appearance (shape and physical characteristics) 3 out of 5 times.
 - 2. Sort object based on shape and length, 3 out of 5 times
 - 3. Locate picture analogy (tells the relationship between pictures) / name action when looking at a familiar picture book, 3 out of 5 times
 - 4. Point to the same in 2 different settings, 3 out of 5 times
 - 5. Remaining on task when distractions are present, 3 out of 5 times
 - 6. Transition with the class to follow the routine of the school day, 3 out of 5 times.

(Exhibit 5, pg. 20)

12. The therapist from [REDACTED] has had no contact with the school-based therapist. Between the date the therapist submitted the prior authorization request on August 11, 2014 and the December 4, 2014 hearing date, the [REDACTED] Therapist made one attempt to contact the school therapist on August 26, 2014. (Testimony of [REDACTED], Petitioner's [REDACTED] speech therapist.)

DISCUSSION

The Department of Health Services sometimes requires prior authorization to:

1. Safeguard against unnecessary or inappropriate care and services;
2. Safeguard against excess payments;
3. Assess the quality and timeliness of services;
4. Determine if less expensive alternative care, services or supplies are usable;
5. Promote the most effective and appropriate use of available services and facilities; and
6. Curtail misutilization practices of providers and recipients.

Wis. Admin. Code § DHS107.02(3)(b)

Speech and language therapy is a Medicaid covered service, subject to prior authorization after the first 35 treatment days. Wis. Admin. Code, § DHS107.18(2).

“In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including Medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.”

Wis. Admin. Code §DHS107.02(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. DHS 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.**

Emphasis added, Wis. Adm. Code. §DHS 101.03(96m)

Petitioner has the burden to prove, by a preponderance of the credible evidence, that the requested level of therapy meets the approval criteria.

It is the position of DHS that the Petitioner's request for services does not meet approval criteria because there has been insufficient coordination of care with Petitioner's school-based speech pathologist. The DHS also denied the prior authorization request, because the goals of the requested services are duplicative of the goals established by the Petitioner's special education program.

DUPLICATION OF SERVICES

There is, in fact, a duplication of services between school therapy and the therapy requested via [REDACTED]. The wording of the goals is different, but they share a common goal increasing the Petitioner's ability to control his breath support, either for volume or length of time, so that he can be heard. They also share a common goal of increasing the Petitioner's ability to identify what he sees in a picture and to relate to and understand the picture in a logical fashion, i.e. what happened first, what happened next, what happened last, what is out of place, etc. Because the services are duplicative, the requested services do not meet the definition of medical necessity established by Wis. Adm. Code. §DHS 101.03(96m).

COORDINATION OF CARE

The on-line provider handbook located at <https://www.forwardhealth.wi.gov/WIPortal> contains guidelines for obtaining prior authorization of services. Guidelines for speech language therapy are found under the category Therapies: Physical, Occupational & Speech Language Pathology.

Topics 2781 and 2784 are found under the subheadings of Provider Enrollment & On-going Responsibilities / Communication / Requirements.

Topic 2781 states:

BadgerCare Plus PT, OT, and SLP providers are required to communicate with other providers as frequently as necessary to do the following:

- Avoid duplication of services.
- Ensure service coordination.
- Facilitate continuity of care.

Topic #2784 states that physical therapy, occupational therapy and speech language pathology providers, along with school-based service providers, are required to communicate with each other at least once a year. School based providers are required to cooperate with physical therapy, occupational therapy and speech language pathology providers who request copies of the child's IEP or components of the IEP team evaluation. *Online Provider Handbook, Topic # 2784*

In the case at hand, it is undisputed that there was no communication between Petitioner's school-based therapist and the [REDACTED] therapist at the time the [REDACTED] therapist developed therapy goals and submitted the prior authorization request in August 2014. Indeed, [REDACTED] made one phone call to the school on August 26, 2014, and left a message. No other efforts were made to coordinate care with the school therapist.

In the absence of communication between the [REDACTED] Therapist and the school-based therapist, there is no way [REDACTED] can show that it has, in fact, coordinated services with the school, avoided duplication of services and facilitated any continuity of care. Concurrently, [REDACTED] is then unable to show that the services it is requesting are the most appropriate supply / level of service that can be safely and effectively provided to Petitioner. Thus, the requested services do not meet the definition of medical necessity established by Wis. Adm. Code. §DHS 101.03(96m).

Accordingly, it is found that DHS correctly denied [REDACTED]'s request to provide speech/language therapy to the Petitioner.

[REDACTED] seems to argue that obtaining the Petitioner's IEP was sufficient to coordinate care with the school. However, Petitioner's IEP was developed in January 2014, seven months before [REDACTED] submitted the prior authorization request. It is not clear how [REDACTED] could have had an understanding of how the Petitioner was progressing with school therapy or whether he was experiencing any difficulties with school therapy, when it did not have any direct communication about the Petitioner's status at the time of the prior authorization request. As such, [REDACTED]'s claim that just getting the IEP was sufficient, in this case, is not supported by the record.

Petitioner should note that once [REDACTED] actually speaks to the school therapist(s) and coordinates care, that [REDACTED] can, on behalf of the Petitioner, submit a new prior authorization request for services. If DHS again denies the request, the Petitioner will have to file a NEW request for fair hearing.

CONCLUSIONS OF LAW

DHS correctly denied Petitioner's request for speech / language services.

THEREFORE, it is

ORDERED

That the petition 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 Milwaukee,
Wisconsin, this 20th day of January, 2015.

\sMayumi M. Ishii
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 20, 2015.

Division of Health Care Access and Accountability