



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

In the Matter of

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

DECISION

MPA/161131

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 modified the Petitioner's request for physical therapy 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 July 4, 2014, [REDACTED] ([REDACTED]) submitted, on behalf of the Petitioner, a prior authorization request, seeking 16 sessions of Therapeutic Exercises and 16 sessions of Neuromuscular Reeducation, at a cost of \$3,200.00. The Petitioner was expected to be seen at home, once per week for 16 weeks. (Exhibit 7, pgs. 7 and 13)
4. The requested therapy is intended to treat, “decreased bed and floor mobility, decreased ability to maintain independent sitting without support (support causing skin breakdown or kyphosis)”. (Exhibit 7, pg. 10)
5. The goals of the requested therapy were stated as follows:
 - a. Demonstrate a 4” weight shift of his trunk while in long sitting without LOB 100% of all trials while reaching for objects.
 - b. Achieve PROM [passive range of motion] in ankles to neutral for improved tolerance of AFO’s and prevention of surgical interventions.
 - c. Demonstrate awareness of LE [Lower Extremities] by grasping either leg with his hand and hand over hand with independent trunk stabilization for purposes of future self-moving of LE for sitting floor mobility with pivot transfers.

(Exhibit 7, pgs. 13-14)
6. On September 4, 2014, DHS sent the Petitioner a notice advising him that the request for services was modified and that it approved coverage of 8 sessions of Therapeutic Exercises and 8 sessions of Neuromuscular Reeducation. (Exhibit 7, pgs. 85-88) It was noted that this was allowed to cover therapy during July and August, when the Petitioner was not in school. (Exhibit 8)
7. On September 4, 2014, DHS sent [REDACTED] notice of the same. (Exhibit 7, pgs. 89-90)
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 2)
9. The Petitioner receives special education services from his school district that include physical therapy services. Petitioner receives school based therapy twice a week, 20 minutes per session. There is no indication that Petitioner received an extended school year, covering the summer months. (Exhibit 7, pg. 79)
10. Petitioner’s IEP, which was created in January 2014, when Petitioner was in a long leg cast, notes that the Petitioner, “displays deficits in upper extremity/trunk strength, lower extremity mobility/strength, postural control, gross motor skills, and wheelchair transitions...Support seating with a seat belt recommended for table top activities when not seated in his wheelchair.” (Exhibit 7, pgs. 61, 62 and 74)
11. The goals for school-based therapy are:
 - a. Remove/attach wheelchair leg strap and release/buckle seat belt with verbal cues 1 out of 1 trial.
 - b. Maintain postural control and an upright posture during short sitting in either his wheelchair or in supportive seating during active reaching up, to either side, and across midline with stand by supervision to retrieve school supplies in one or both hands 5 out of 5 trials.
 - c. Maintain supported standing for 10-12 minutes during play with minimum assist 1 out of 1 trial.

- d. Open classroom door, travel through doorway and close door 2 out of 2 trials.
 - e. Safely access the school playground in his wheelchair (up/down ramp, around holes/cracks etc. as demonstrated 1 out of 1 trial. (Exhibit 7, pg. 67)
12. The therapist from [REDACTED] had contact with the school-based therapist at the time the current IEP was created in January 2014, but had no other contact with the school-based therapist and did not consult with the school-based therapist when establishing goals for the July 4, 2014 prior authorization request. (Testimony of Linda Niemela, Petitioner's [REDACTED] physical 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)

“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.

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.

Prior authorization is required for physical therapy services in excess of 35 treatment day “per spell of illness.” Wis. Admin. Code §DHS 107.16(2)(b)

It is undisputed that 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 and that he is prone to fractures in his legs.

In the letter submitted by DHS, it modified the request for services from 16 sessions to 8 sessions, because [REDACTED] failed to coordinate care with the Petitioner’s school-based therapist and as such, cannot establish the appropriateness of the requested therapy. In addition, DHS indicated that it modified the request for services, because the requested therapy was duplicative of the school based therapy.

Because [REDACTED] could not show that the requested therapy was the most appropriate supply / level of service that could be safely and effectively provided to Petitioner and because the services requested were duplicative of the services provided by Petitioner’s school, DHS argues that [REDACTED] failed to show that the requested therapy was medically necessary, as established by Wis. Adm. Code. §DHS 101.03(96m).

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 common goals of increasing the Petitioner’s ability to reach for/obtain objects while in a seated position and increasing the Petitioner’s trunk strength and control, though the [REDACTED] goals might anticipate the Petitioner sitting somewhere other than in his wheelchair. 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 July 2014.

The last time Petitioner's physical therapists spoke to one another was in January 2014, when the child was in a cast. This was six months before [REDACTED] created its plan of care and submitted a prior authorization request in July 2014. Given Petitioner's complex medical condition and the fact that his condition clearly would have changed between January and July, it was necessary for the therapists to communicate with one another when [REDACTED] was anticipating submitting a prior authorization request, so that the [REDACTED] Therapist could be brought up to date with what was happening with Petitioner's therapy at school.

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 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 modified the request for therapy from 16 sessions to 8 sessions. Petitioner should note that this was generous, because DHS might well have been justified in denying the request for therapy, in its entirety.

[REDACTED] argued that it was not able to reach the school-based therapist because of summer vacation. That is unfortunate, but does not relieve [REDACTED] of its obligation to coordinate care. Given [REDACTED]'s involvement with the Petitioner's case in January, perhaps it should have anticipated the need to address the Petitioner's status at the end of the school year and contacted the school therapist before the school year ended.

CONCLUSIONS OF LAW

DHS correctly modified the Petitioner's request for physical therapy 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