



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]

DECISION

MPA/161198

PRELIMINARY RECITALS

Pursuant to a petition filed October 09, 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 30, 2014, at Elkhorn, Wisconsin.

The issue for determination is whether evidence has been submitted on behalf of Petitioner that is sufficient to demonstrate that a prior authorization request for a speech language therapy (SLT) meets the criteria necessary for payment by the Wisconsin Medical Assistance Program.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]

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Respondent:

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

By: Theresa Walske, MS, CCC-SLP
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Walworth County.

2. A prior authorization (PA) request seeking speech language therapy (SLT) for Petitioner was filed by provider, New Berlin Therapies, on or about August 11, 2014. That PA sought Medicaid payment for 26 SLT sessions at a frequency of once per week commencing September 10, 2014. The cost was noted to be \$3406.00.
3. Petitioner is 3 years of age (DOB 5/3/11). The PA form notes, in the diagnosis section, lack of unspecified normal development and mixed language disorder as primary and secondary diagnosis. She is noted to have a new diagnosis of apraxia¹. She lives with her parents in the community. She does receive speech language therapy services through the school system during the school year. Petitioner did receive approval for private summer SLT in the summer of 2014.
4. The PA noted at Finding of Fact # 2 was denied as not being medically necessary and because it did not meet other requirements of State law found at *Wis. Admin. Code, DHS, §107.02(e) and DHS §107.18 (3)*. More specificity is provided in Exhibit # 3 – an October 22, 2014 letter from the OIG authored by Theresa Walske, MS, CCC-SLP.

DISCUSSION

The Division of Health Care Access and Accountability may only reimburse providers for medically necessary and appropriate health care services and equipment listed in Wis. Stat. §§ 49.46(2) and 49.47(6)(a), as implemented by Wis. Admin. Code, Ch. DHS 107. Some services and equipment require submission and approval of a written prior authorization request by the provider. Some services and equipment are never covered. Speech language therapy is a service that requires approval of a request for prior authorization. *See, generally, Wis. Admin. Code, DHS §107.18*. A PA is required after 35 lifetime SLT sessions. *Wis. Admin. Code, DHS, §107.18(3)*.

When determining whether to approve any prior authorization, the Division of Health Care Access and Accountability (DHCAA) must consider the generic prior authorization review criteria listed at *Wis. Admin. Code, DHS § 107.02(3)(e)*. Those criteria are:

- (e) *Departmental review criteria*. 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.

The Wisconsin Administrative Code does define the term ‘medical necessity’. It is a service that:

¹ Childhood apraxia of speech (CAS) is a motor speech disorder. Children with CAS have problems saying sounds, syllables, and words. This is not because of muscle weakness or paralysis. The brain has problems planning to move the body parts (e.g., lips, jaw, tongue) needed for speech. The child knows what he or she wants to say, but his/her brain has difficulty coordinating the muscle movements necessary to say those words. <http://www.asha.org/public/speech/disorders/ChildhoodApraxia/>

“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).

As with most public assistance benefits 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 is Petitioner’s burden to demonstrate that s/he qualified for the requested speech and language services by a preponderance of the evidence. It is not the OIG’s burden to prove that s/he is not eligible. Further, I note that Medicaid is meant to provide the most basic and necessary health care services at a reasonable cost to a large number of persons and must authorize services according to the Wisconsin Administrative Code definition of medical necessity and other review criteria noted above.

I am declining to reverse the style of this prior authorization request. The evidence is not sufficient to demonstrate that the requested services do not duplicate school services or that they appropriate.

The goals of the school and private therapy are noted at page 3 of Exhibit #3. While semantically different, they are effectively the same. While progress was made in the summer of 2014 with use of picture cards that does not mean that private SLT is warranted. There is no reason why this type of therapy could not have been coordinated with a home program and/or in conjunction with the school; in fact, this picture system works best with integration across environments. The new diagnosis, apraxia, does not by itself justify the therapy. Further, the Department makes a very persuasive argument with regard to therapy for apraxia – it should focus on planning, sequencing and coordinating muscle movement. Both school and private therapy address this.

New Berlin Therapies will not receive a copy of this Decision. In order to have the requested speech therapy approved, the Petitioner/Petitioner’s mother must provide a copy of this Decision to New Berlin Therapies.

CONCLUSIONS OF LAW

That the evidence presented on behalf of Petitioner is not sufficient to demonstrate that this prior authorization request for speech language therapy meets the criteria necessary for payment by the Wisconsin Medical Assistance Program.

THEREFORE, it is

ORDERED

That this 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 Milwaukee,
Wisconsin, this 7th day of January, 2015

\sDavid D. Fleming
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 7, 2015.

Division of Health Care Access and Accountability