



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
*Redact*  
[REDACTED]  
[REDACTED]

DECISION

MPA/161592

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 29, 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 17, 2014, at Barron, Wisconsin.

The issue for determination is whether the petitioner is entitled to medical assistance reimbursement for speech and language therapy. A hearing scheduled for November 13, 2014, was rescheduled at the petitioner's request.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]  
[REDACTED]  
*Redact*  
[REDACTED]  
[REDACTED]

Respondent:

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

By: [REDACTED] *Redact*

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

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner is a resident of Barron County.

2. On September 3, 2014, the petitioner with his speech therapist, [Redact] of [Redact], requested 16 weekly 45-minute speech and language therapy sessions at a cost of \$3,200. The Office of Inspector General denied the petitioner's request on October 15, 2014.
3. The petitioner is a 15-year-old boy diagnosed with ADHD, anxiety, and high-functioning autism.
4. The petitioner has been receiving private speech therapy from [Redact] since January 25, 2013.
5. Between January 2013 and August 2014, the petitioner's raw scores fell from 30 to 26 in syntax construction, from 20 to 17 in grammatical morphemes, and from 36 to 26 in grammatical judgment. These scores represented a drop in age equivalent scores from 8 years 2 months to 7 years 3 months in syntax construction, from 9 years 8 months to 8 years 11 months in grammatical morphemes, and from 7 years 11 months to 5 years in grammatical construction. He was 15 years 1 month old when he most recently took these tests.
6. The petitioner usually has no trouble articulating words he knows.
7. The petitioner has an individualized education plan through his school district. His school makes numerous academic and social accommodations for him. He is in regular classes four periods a day. He participates in course for social thinking five days a week. He does not receive special education that specifically addresses speech and language deficits. His IEP includes the following goals:
  - a. [He] will increase his reading comprehension to a lexile from 884 to 984 or higher on two consecutive measures using the Scholastic Reading Inventory.
  - b. [He] will increase his written language skills as measured by the benchmarks below:
    - i. Given a topic sentence, [he] will independently, using a writing structure (sentence starters), add 3 supporting sentences that support the topic in a paragraph on 4 out of 5 times during one school quarter.
    - ii. [He] will use 2 transition words within his paragraph on 4 out of 5 times during one school quarter.
    - iii. [He] will write a four to five sentence paragraph, without a sentence structure (sentence starters) by term 4, 100% of the time.
  - c. [He] will increase his ability to self regulate his emotional responses and anxiety from a level of being unable to communicate his needs to communicating his needs as measured by the benchmarks below: [omitted].
  - d. [He] will increase expressive/receptive social thinking skills per benchmarks below: [omitted]
8. The petitioner participates in Reading 180® at school. This is a reading intervention program designed to help students who are least two years below grade level.
9. The petitioner's parents did not participate in the meeting held on March 21, 2014, to set up his IEP. The school talked to the petitioner's mother on February 27, 2014, and she agreed to meet on a Friday in March, either on the 21<sup>st</sup> or the 28<sup>th</sup>. The school sent a paper invitation to the parents for the March 21 meeting on February 6. The school called the parents on February 19 to remind them of the March 21 meeting.
10. [Redact] 's plan is to target the petitioner's expressive and receptive language skills. Its current short-term goals are as follows:
  - a. [He] will tell at least 2 different meanings for multiple meaning words (homonyms, heteronyms, homophones, etc.) at least 90% of the time.

- b. [He] will use words from the above goal to tell at least 2 different sentences using multiple meaning words (homonyms, heteronyms, homophones, etc.) at least 90% of the time.
- c. [He] will identify parts of speech (noun, verb, adjective, etc... [ellipses in original] ) when given a target word at least 90% of the time in order to develop an understanding of sentence structure.
- d. [He] will be able to correctly form a sentence when given a group of words to demonstrate understanding of word order and basic sentence structure at least 90% of the time.
- e. [He] will identify and use regular and irregular verbs, adverbs, prepositions, and coordinating conjunctions within a sentence structure at least 90% of the time given faded cues and prompts.
- f. [He] will formulate sentences to demonstrate correct use of subject-verb agreement within sentence structure at least 90% of the time given faded cues and prompts.
- g. [He] will independently formulate spontaneous sentences with correct subject-verb agreement within the sentence structure at least 90% of the time with no cues.

### DISCUSSION

Medical assistance covers speech therapy, but recipients must obtain prior authorization after the first 35 visits. Wis. Admin. Code § DHS 107.18(2)(b). The petitioner, together with his provider, [Redacted], requested 16 weekly speech and therapy sessions at a cost of \$3,200. The Office of Inspector General denied the request, primarily because the proposed therapy duplicates instruction he already receives through this school district. Whether a service duplicates another service is one of the criteria for determining whether a service is medically necessary. Wis. Admin. Code, § DHS § 107.02(3)(e)6.

The petitioner is a 15-year-old boy diagnosed with ADHD, anxiety, and high-functioning autism. He requests the services primarily because he is several years behind in his basic language skills. Both [Redacted] and his IEP target his language skills, but [Redacted] concentrates more on oral skills while his school concentrates more on his written work. [Redacted] set the following goals:

1. [He] will tell at least 2 different meanings for multiple meaning words (homonyms, heteronyms, homophones, etc.) at least 90% of the time.
2. [He] will use words from the above goal to tell at least 2 different sentences using multiple meaning words (homonyms, heteronyms, homophones, etc.) at least 90% of the time.
3. [He] will identify parts of speech (noun, verb, adjective, etc...) when given a target word at least 90% of the time in order to develop an understanding of sentence structure.
4. [He] will be able to correctly form a sentence when given a group of words to demonstrate understanding of word order and basic sentence structure at least 90% of the time.
5. [He] will identify and use regular and irregular verbs, adverbs, prepositions, and coordinating conjunctions within a sentence structure at least 90% of the time given faded cues and prompts.
6. [He] will formulate sentences to demonstrate correct use of subject-verb agreement within sentence structure at least 90% of the time given faded cues and prompts.
7. [He] will independently formulate spontaneous sentences with correct subject-verb agreement within the sentence structure at least 90% of the time with no cues.

Except for the emphasis on oral skills, this is similar to what his school district provides. His school district set the following goals related to written language:

1. [He] will increase his reading comprehension to a lexile from 884 to 984 or higher on two consecutive measures using the Scholastic Reading Inventory.
2. [He] will increase his written language skills as measured by the benchmarks below:
  - a. Given a topic sentence, [he] will independently, using a writing structure (sentence starters), add 3 supporting sentences that support the topic in a paragraph on 4 out of 5 times during one school quarter.
  - b. [He] will use 2 transition words within his paragraph on 4 out of 5 times during one school quarter.
  - c. [He] will write a four to five sentence paragraph, without a sentence structure (sentence starters) by term 4, 100% of the time.

At school, the petitioner participates in Reading 180®, a reading intervention program designed to help students at least two years below grade level. Of course, all schools teach the topics in [Redact]'s therapy. These are basic academic topics taught in school from first grade through high school graduation by teachers trained to do so.

When determining whether the requested therapy duplicates therapy a person already receives, the Division of Hearings and appeals has generally looked at whether the goals and intended outcomes of the two providers are similar. It does not matter if the providers use different techniques or if one uses individual and the other group therapy. There are limits to this type of analysis. There must be some reasonable expectation that the provider can accomplish what she is trying to accomplish. If the child's needs are great, and the school's therapy is insufficient to meet those needs, more intensive outside therapy may be necessary. Nor would one expect a discredited technique to accomplish the stated goals. But the petitioner and his provider have the burden of proving by the preponderance of the credible evidence that any requested therapy is necessary.

Those speaking on behalf of the petitioner contend that his basic language skills are so far behind that the school will no longer teach him what he now needs to know. They also contend that his therapist has the special skills needed to treat those with autism. It is unclear why the petitioner's IEP does not direct more attention toward his verbal skill, but one reason may be that his parents missed the last meeting when the plan was set. According to the IEP, the meeting was held on March 21, 2014. The school talked to the petitioner's mother on February 27, 2014, and she agreed to meet on a Friday in March, either on the 21<sup>st</sup> or the 28<sup>th</sup>. The school sent a paper invitation to the parents for the March 21 meeting on February 6. The school then called the parents on February 19 to remind them of the March 21 meeting. It appears that the school try to accommodate the petitioner's parents but they did not reciprocate. As for the claim that [Redact]'s therapist has special skills unavailable to the school, the therapist testified extensively about this knowledge. Despite these concerns, I will give the petitioner the benefit of a doubt and not deny his appeal solely on the ground that it duplicates therapy he already receives.

But he must still demonstrate that the therapy is cost effective and has proven medical value as required by Wis. Admin. Code, § DHS 101.03(96m). [Redact] has been providing therapy to him since January 2013. The therapy costs \$200 for each 45-minute session, so it is reasonable to expect significant improvement for this amount of money.

Most of the testimony consisted of an explanation of the petitioner's great deficits and the need for specialized services from a therapist trained to help those with autism. Although these are valid points, they only present the first step toward approval. Ultimately [Redact] must prove not only that the petitioner has deficits but that its plan will alleviate the deficits, which means that it must improve his ability to grasp the fundamentals of the English language.

There was some anecdotal information that it had. The petitioner met some goals, which were then dropped. But none of the testimony or documentation provided any measurable evidence concerning how

it was determined that these goals were met. When determining the outcome of therapy, objective evidence is preferred over subjective evidence.

**Redact** tested the petitioner when he began therapy in January 2013 and again 19 months later in August 2014. The tests were not comprehensive, but they covered a wide range of basic language skills: syntax construction, grammatical morphemes, and grammatical judgment. One would expect some improvement merely because the petitioner was more than 1 ½ years older when he took the tests the second time. Instead, his results fell in each of the three areas. His raw scores fell from 30 to 26 in syntax construction, from 20 to 17 in grammatical morphemes, and from 36 to 26 in grammatical judgment. These scores represented a drop in age equivalent scores from 8 years 2 months to 7 years 3 months in syntax construction, from 9 years 8 months to 8 years 11 months in grammatical morphemes, and from 7 years 11 months to 5 years in grammatical construction. He was 15 years 1 month old when he most recently took these tests. Based upon this, whatever special skills the therapist has, there is no evidence that these skills are having any measurable positive effect on the petitioner's basic language skills.

Given that the therapy is also similar to what he should learn in school, I find that he has not proven by the greater weight of the credible evidence that it is medically necessary. Therefore, the Office of Inspector General correctly denied the request.

### CONCLUSIONS OF LAW

The Office of Inspector General correctly denied the petitioner's request for speech and language therapy because he has not proven by the preponderance of the credible evidence that the therapy is medically necessary.

**THEREFORE, it is**

**ORDERED**

The petitioner's 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 Madison,  
Wisconsin, this 28th day of January, 2015

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\sMichael D. O'Brien  
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 28, 2015.

Division of Health Care Access and Accountability