



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

In the Matter of

[Redacted]
[Redacted]
Redact
[Redacted]

DECISION

MPA/163062

PRELIMINARY RECITALS

Pursuant to a petition filed January 5, 2015, under Wis. Stat., §49.45(5), to review a decision by the Division of Health Care Access and Accountability (DHCAA) to deny a Medical Assistance (MA) authorization request for speech therapy (ST), a hearing was held on March 11, 2015, by telephone. A hearing set for February 19, 2015 was rescheduled at the petitioner’s request.

The issue for determination is whether the DHCAA correctly denied ST services.

PARTIES IN INTEREST:

Petitioner:

[Redacted]
[Redacted]
Redact
[Redacted]

Respondent:

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

By: Written submission of [Redacted], ST Consultant

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is an 8-year-old resident of Oconto County who receives MA.
2. Petitioner has Pervasive Developmental Disorder, Attention Deficit Hyperactivity Disorder, limited speech intelligibility, and frustrations due to inability to communicate. He attends school and receives ST there as part of his Individual Education Program. He also receives in-home autism treatment.
3. On September 16, 2014, [Redacted], Inc. requested authorization for once weekly private ST services for 25 weeks beginning September 18, 2014. By a letter dated November 21, 2014, the

DHCAA denied the request because there has been a lack of progress and because petitioner receives ST in school.

4. Petitioner has received ST at Redact, Inc. since May, 2013. In 2013 petitioner scored a 40 on the standardized Goldman Fristoe Test of Articulation, putting him at less than one percentile for his age group. Speech intelligibility was judged to be less than 50% with a known context. It was reported that his mother found him to be intelligible 90% of the time but unfamiliar listeners judged him intelligible 40-50% of the time.
5. When the September, 2014 authorization request was filed no new test scores were provided. It was reported that petitioner was intelligible at the one and two word level 80% of the time, and 60% at the three word level. Petitioner did not meet any of the short term goals set in September, 2013.
6. When the request was filed in September the private therapist noted that coordination between the school and private therapists was done by petitioner's mother. The private therapist did note that school ST was focused on expressive and social language while the private ST was working on actual articulation and sound production. It later was reported that the private therapist spoke with the school therapist on October 17, 2014. The school therapist reported that she is working on language use, not on articulation.

DISCUSSION

Speech and language therapy is an MA-covered service, subject to prior authorization after the first 35 treatment days. Wis. Admin. Code, §DHS 107.18(2). In reviewing a PA request the DHCAA must consider the general PA criteria found at §DHS 107.02(3) and the definition of "medical necessity" found at §DHS 101.03(96m). §DHS 101.03(96m) defines medical necessity in the following pertinent provisions:

"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; ...
 3. Is appropriate with regard to generally accepted standards of medical practice; ...
 6. Is not duplicative with respect to other services being provided to the recipient; ...
 8. ...[I]s 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.

The code requires that a person must continue to improve for therapy to continue by meeting established and measureable goals over six months or continued ST will be denied. §DHS 107.18(3)(e). At some point the therapy program should be carried over to the home, without the need for professional intervention.

In addition, 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, Physical, Occupational, and

Speech Therapy, Topics 2781 and 2784. It is up to the provider to justify the provision of the service. §DHS 107.02(3)(d)6.

Prior hearing decisions have held consistently that where speech therapy is provided in school, it would not be cost effective for MA to cover private therapy. If the private therapy covers a situation that school therapy does not address, it has been found that the services are not duplicative. See, for example, Decision no. MPA-48/16180, dated August 21, 1997, where the evidence showed that the petitioner had a unique oral deficiency that the school therapist was not trained to address. Also see no. MPA-51/41838 (11-18-99), where the school therapist was working on building vocabulary while the private therapist was working on the physical process of vocalizing sounds.

I note first that after the hearing petitioner's parents provided to me a copy of a note written by Ms. Redact, his private therapist. Ms. Redact noted that petitioner has improved his articulation since starting at Redact, Inc., but I was puzzled by that statement since his 2015 Goldman Fristoe test score appeared to me to be lower than when he first took the test in 2013. I thus sent the note to the DHCAA consultant with the question of whether the new test showed improvement as alleged. The consultant concluded that the test results do not show improvements resulting from the ST provided during the past two years.

I conclude that the denial was correct. First, this entire PA request is a classic example of doing the process backward. When the request was filed in September, 2014, there was no objective record showing petitioner's status and progress. Such objective records were not provided until six months later, after the hearing on the denial. Furthermore, there was no record of why the private therapy was necessary when petitioner also was receiving ST in school; specifically there was no record of coordination between the school therapist and private therapist showing that the school therapist was not able to work on speech articulation. Eventually, again well after the PA was filed, there was mention that the two therapists spoke to each other with little description of the discussion. While it is true that an earlier decision allowed private therapy when the school therapist was working on vocabulary and the private therapist was working on articulation, a description on why the procedures were separated would appear to be necessary based upon the Department's policies for PA approval.

Finally, it appears that based upon the recent testing there has been some improvement in petitioner's articulation, but the improvement is so slight that it is almost impossible to attribute it to two years of ST versus simple, natural maturation. Petitioner still remains at less than the first percentile rank in abilities, and his standard score actually has decreased. I thus must conclude that the denial of the PA request was appropriate given the lack of progress after two years of services and the fact that petitioner is receiving ST from another therapist with little evidence of why two therapists are needed.

CONCLUSIONS OF LAW

The denial of the PA request was appropriate given the lack of progress after two years of services and the fact that petitioner is receiving ST from another therapist with little evidence of why two therapists are needed.

THEREFORE, it is

ORDERED

That 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 30th day of March, 2015

\sBrian C. Schneider
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 March 30, 2015.

Division of Health Care Access and Accountability