



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
Redact
[Redacted]

DECISION

MPA/164039

PRELIMINARY RECITALS

Pursuant to a petition filed February 18, 2015, 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 telephone hearing was held on April 10, 2015. A March, 2015, hearing was rescheduled at petitioner’s request.

The issue for determination is whether the respondent correctly denied petitioner’s prior authorization request for speech therapy.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
[Redacted]
Redact
[Redacted]

Petitioner’s Representative:

Attorney [Redacted]
[Redacted]
Redact

Respondent:

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

By: [Redacted] (written appearance only)
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 15 year old resident of Barron County who was diagnosed with autism in January, 2013.
2. Petitioner has participated in speech therapy (SLT) sessions at [Redact] since January, 2013. Exhibit P-3.
3. Petitioner has an Individualized Education Plan (IEP) with the [Redact]. Exhibit P-3. An initial IEP was effective April 19, 2014, and a subsequent IEP was effective May 5, 2014. See, Exhibit P-4 and P-6.
4. Petitioner's IEP incorporates "Think Social" classes five days per week (40 minutes per session), and also incorporates 400 minutes per week of special education instruction utilizing the Read 180 reading intervention program. Exhibit P-7.
5. Petitioner's IEP does not list speech/language serviced among his IEP special education services, related services, or supplementary aids and services. Exhibit P-10.
6. Between January, 2013 and August 2014, Petitioner's Comprehensive Assessment of Spoken Languages (CASL) scores, percentile rankings, and age equivalencies declined. Exhibit P-3.
7. Petitioner's speech therapist found that petitioner had made gains in the CASL target areas in the sixteen week treatment period immediately preceding the August, 2014 assessment. Exhibit P-3.
8. Petitioner's progress notes demonstrate that over the most recent 8 months during which petitioner received outpatient speech therapy at [Redact], petitioner demonstrated improvement in raw scores across 9 out of 9 Clinical Evaluation of Language Fundamentals-5 (CELF-5) subtest areas and increased his age-equivalent skill level in 7 out of 8 subtests. Petitioner demonstrated improvement across 5 out of 5 composite indexes of CELF-5 test scores. Exhibit P-13.
9. Current progress notes indicate that petitioner has improved his comprehension and writing skills, and has met several short term therapy goals. Exhibit P-13.
10. Petitioner has not yet met long term therapy goals of demonstrating expressive and receptive language skills at petitioner's chronological age limit. Exhibit P-13.
11. On or about January 2, 2015, petitioner's provider submitted a Prior Authorization request (no. [Redact]) seeking SLT services one time per week for 16 weeks, beginning January 7, 2015. The respondent denied the request on January 13, 2015. Exhibit R-2.

### 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 determining whether to approve such a therapy request, the Bureau employs the generic prior authorization criteria found at Wis. Admin. Code § DHS 107.02(3)(e). Those criteria include the requirements that a service be medical necessary, appropriate, and an effective use of available services. Included in the definition of "medically necessary" at § DHS 101.03(96m) are the requirements that services not be duplicative of other services, and that services be cost effective when compared to alternative services accessible to the recipient. 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 Manual, Speech Therapy, page 113.001.02. 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.

The petitioner's attorney presented an extensive and comprehensive brief outlining the history of this matter, including two prior denials of Prior Authorization requests (and affirmations of those denials on appeal). His brief directly addressed the concerns and issues raised by the respondent's representative in her written explanation affirming the denial once again. This brief, multiple proposed Findings of Fact, and the petitioner's exhibits were provided to the respondent prior to hearing. No response was received from the respondent, and the respondent only appeared at hearing in writing. See Exhibit R-1.

I am satisfied that the petitioner has shown that the respondent has erred in the denial here. The respondent's denial decision is based, in large part, upon the duplication of services. Special education classes are not fairly to be considered the "same thing", or even a similar thing, to speech & language therapy. This is not duplication of services. A secondary reason stated was the conclusion that the skills of a SLT were not required to implement or meet the goals. I cannot agree. The outlined goals (See Exhibit P-3) clearly fall within expressive and receptive language skills that may be treated by a speech & language pathologist. Covered SLT includes expressive language, fluency, language structure (phonology, morphology and syntax), and language content (range of abstraction in meanings and cognitive skills), among other areas. No doubt, repetition in the community, at home, and in the schools would be advisable and enhance this child's progress, but I cannot conclude that the requested regimen should be denied on the basis that no SLT services are required. The record before me demonstrates that such services are required.

In the context of a fair hearing, the respondent has the burden of proving, by a preponderance of the evidence, that its decision was correct, *see State v. Hanson*, 98 Wis.2d 80, 295 N.W.2d 209 (Ct.App.1980). The respondent provided its argument, relying heavily upon the decisions that were issued historically here. The respondent failed, however, to counter the well-researched and well-reasoned responsive argument presented by the petitioner.

I conclude that the respondent has erroneously exercised its discretion in this case, and that the preponderance of the evidence establishes that the petitioner was eligible for payment for SLT services. I will remand the matter for the Department to pay for 16 such sessions, once per week.

**I note to petitioner that his provider will not receive a copy of this decision. In order to have the SLT services approved, petitioner must provide a copy of this decision to his provider. His provider must then submit a new prior authorization request, along with a copy of this decision, to receive the approval.**

### CONCLUSIONS OF LAW

The petitioner's request for SLT services is medically necessary.

**NOW, THEREFORE, it is**

**ORDERED**

That petitioner's provider is authorized to provide the petitioner with the requested SLT services (see, Prior Authorization Redact). To receive reimbursement, petitioner's provider must submit its claim, along with a copy of this decision and a new prior authorization form, to Forward Health for payment.

**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 22nd day of May, 2015.

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\sPeter McCombs  
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 May 22, 2015.

Division of Health Care Access and Accountability

Attorney Redact