FH
Redact

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

MPA/164169

PRELIMINARY RECITALS

Pursuant to a petition filed February 20, 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 hearing was held on March 25, 2015, at New Richmond, Wisconsin.

The issue for determination is whether the petitioner is entitled to medical assistance reimbursement for occupational therapy.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

Redact

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: 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 (CARES # Redact) is a resident of Redact County.

2. On November 19, 2014, the petitioner with [redacted] Redact Redact [redacted]., requested 26 weekly occupational therapy sessions at a cost of $3,588. After it submitted additional information at the Office of Inspector General's request, the office denied the request on January 12, 2015.

3. The petitioner is a six-year-old boy diagnosed by the provider with autism, muscular incoordination, and sensory hyperactivity.

4. Redact lists the following underlying conditions:

    1) Level of arousal
    2) Self-awareness
    3) Safety awareness
    4) Task sequencing
    5) Problem solving
    6) Muscle strength
    7) Dynamic balance
    8) Coordination/muscle planning
    9) Proprioception
    10) Kinesthesia
    11) Tactile processing
    12) Sensory awareness
    13) Body scheme awareness
    14) Vestibular status

5. None of the 14 underlying conditions listed in the previous paragraph were confirmed by objective testing.

6. Redact lists the following as problems to be treated:

    1) Sensory processing impacting functional participation
    2) Motor planning and development impacting functional participation
    3) Social skill impacting functional participation

7. Redact set the following goals for the petitioner:

    1) [He] will demonstrate improved sensory processing across environments to increase functional participation in daily activities. (Limitation: Difficulties with self-awareness processing across environments to increase functional participation in daily activities.)

        A. Per parent report, [he] will decrease episodes of screaming 50% on a daily basis. (Limitation: Difficulties with self-awareness processing across environments to increase functional participation in daily activities.)

        B. [His] parents will follow home programming suggestions to improve [his] follow-through across environments. (Limitation: [His] family requires ideas and resources for home programming as well as ongoing support as treatment progresses.)

    2) [He] will demonstrate improved fine motor skills to increase independent participation in daily activities across environments. (Limitation: Difficulties with coordination/motor planning impacting fine motor performance. Decreased muscle strength impacting fine motor performance.)

        A. [He] will make 3, 2" vertical lines following demonstration, 100% of the time. (Limitation: Difficulties with coordination/motor planning impacting fine motor performance. Decreased muscle strength, impacting fine motor performance.)

B. [He[will independently create a 4-inch block structure following a visual model, 3 out of 4 attempts. (Limitation: Difficulties with coordination/motor planning impacting fine motor performance. Decreased muscle strength, impacting fine motor performance.)

C. [He] will independently feed himself spoon-appropriate foods using a spoon, 100% of the time. (Limitation: Difficulties with coordination/motor planning impacting fine motor performance. Decreased muscle strength, impacting fine motor performance.)

8. The petitioner's school district provides him with 30 minutes of speech and language therapy each week and 30 minutes of physical therapy twice a week.

DISCUSSION

The petitioner seeks 26 weekly occupational therapy sessions at a cost of $3,588. Medical assistance covers occupational therapy if the recipient obtains prior authorization after the first 35 visits. Wis. Admin. Code, § DHS 107.17(2)(b). When determining whether a service is necessary, the Division must review, among other things, whether the service is medical necessary, the appropriateness of the service, the cost of the service, and the effective and appropriate use of available services. Wis. Admin. Code, § DHS 107.02(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. 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)

An effective occupational therapy proposal must follow several-step process. First, it must determine the nature of the recipient's disability and the limitations that disability places upon him. Second, it must set goals to help him overcome or live with his limitations. Third, it must have a treatment plan that has a realistic chance of accomplishing these goals. In order to determine whether the therapy meets these criteria, the provider must perform tests that consistently and accurately measure performance. And the treatment must actually require the services of an occupational therapist or it is not a cost-effective use of the medical assistance program's limited assets. If the therapy does not meet these criteria, it fails the medically necessary test because it is not consistent with the recipient's symptoms or with treatment of his disability.

The petitioner is a six-year-old boy diagnosed by his provider, Redact Redact., (formerly Redact) with autism, muscular incoordination, and sensory hyperactivity. Its two primary goals for him are that he "will demonstrate improved sensory processing across environments to increase functional participation in daily activities" and that he "will demonstrate improved fine motor skills to increase independent participation in daily activities across environments." The Department ruled in *Final Decision No. MPA-65/111878* that sensory integration does not effectively treat autism and therefore occupational therapy relying on those techniques must be denied for autistic children. Because the petitioner has autism, the care associated with the first goal must be denied. The remaining issue is whether the petitioner is entitled to the therapy related to improving his fine motor skills to increase his participation in daily activities.

Redact lists 14 underlying conditions that it contends cause his deficits. *See Finding of Fact, No. 4.* Many of these pertain to his sensory problems and are not relevant because therapy relating those problems has already been ruled out. But none of the conditions, whether associated with his fine motor skills or his sensory issues, is confirmed by any objective measurement of the limitation. For example, strength could be measured by the amount of a common exercise such as pushups one could do or the amount of weight one could lift. Nothing of the sort was done. Even if it were, it would not be enough to state that the petitioner was below average for his age because he is small and this level of performance in lifting weights (although not pushups or situps) would be expected to be below normal.

The department contends that the measurements of the petitioner's functional deficits are also insufficient because they do not specify what he can do with his hands. I agree that the test could be more specific. But Redact does indicate that in visual motor integration and total fine motor he is below the first percentile and that grasping he is at the first percentile. The summary indicates that he cannot "follow a demonstration to model a block structure" and that he "does not grip a marker to make lines, or place cubes in a cup." This is enough to establish that he his fine motor skills are limited and affect his ability to perform tasks.

Nevertheless, on the whole, Redact has not done enough to prove by the preponderance of the credible evidence that the requested therapy is medically necessary. For one thing, with half of the request rejected because it pertains to sensory integration for a child with autism, and the total request being for only one session per week, the amount of services that could be approved for fine motor skills is less than would be feasible. And because of the lack of objective evidence supporting what Redact states are the petitioner's underlying conditions, the evidence is weak that the proposed therapy will address the deficits. Finally, the specific goals pertaining to fine motor skills—drawing two-inch vertical lines, creating four-inch block structures, and independently feeding himself with a spoon—are the types of things one should learn at school and home. Perhaps Redact's therapists have some special techniques that will allow the petitioner to learn more under their guidance than under the guidance of teachers and parents, but, as with the petitioner's underlying conditions, they have not offered any evidence of this. Therefore, the Office of Inspector General's denial is upheld.

CONCLUSIONS OF LAW

The Office of Inspector General correctly denied the petitioner's request for occupational therapy because he has not shown by the preponderance of the credible evidence that the request 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 7th day of May, 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 May 7, 2015.

Division of Health Care Access and Accountability