



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
[Redacted]
[Redacted]

DECISION

MPA/164171

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 speech and language therapy.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
[Redacted]
[Redacted]
[Redacted]

Respondent:

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

By: [Redacted]
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 # [Redacted]) is a resident of [Redacted] County.

2. On December 16, 2014, the petitioner with [Redact] [Redact] requested speech therapy twice a week for 26 weeks at a cost of \$7,072. After [Redact] submitted more information, the Office of Inspector General denied the request on January 22, 2015.
3. The petitioner is a six-year-old boy diagnosed by [Redact] with autism and a mixed language disorder.
4. [Redact] has not objectively tested the petitioner's speech and language abilities.
5. [Redact]'s primary goal for the petitioner is for him to "increase his receptive and expressive language skills to an age appropriate level to effectively communicate across all functional environments."
6. [Redact]'s sub-goals for the petitioner are:
 - a. During highly preferred activity, [he] will communicate basic requests and more /all done via verbally, sign, and/or his SGD [speech-generated device] in 5 out of 10 trials, given gestural or physical prompts.
 - b. [He] will increase his understanding of cause and effect by accessing his SGD to pop bubbles, turn a toy on, etc. in 5 out of 10 trials, given gestural or physical prompts.
 - c. Given a white board, [he] will use a written and picture schedule 2-3x for transitions during a therapy session as a reinforcement schedule to increase his understanding of *first this, then this*.
7. The petitioner's school district provides him with 30 minutes of speech and language therapy each week. His school set the following goals for him:
 - a. [He] will request a desired object when given a choice of 2 or 3 by means of pointing, picking, verbalizing, or using an aac device 75% of the time
 - b. [He] will demonstrate use of aac device to assist communication to peers during structured opportunities 50% of the time.
 - c. [He] will attend to an activity (story time, center, fine motor) in our daily routine for 10 minutes 4/5 trials.
8. The speech generating device used by [Redact] is the "My First AAC" for an iPad.
9. The petitioner receives 30-40 hours a week of in-home autism services. These services include speech and language therapy. The goals, which are listed as steps, are:
 - a. Occasionally uses spontaneous verbalizations to request (b)
 - b. Imitates or attempts to imitate verbal request within 15 seconds of showing motivation, 80% opps
 - c. Independently requests 1 item or activity within 15 sec of showing motivation, 80% opps (preferred food)
 - d. Verbally requests 3 items or activities within 15 sec of showing motivation, 80% opps
 - e. Verbally requests 4 items or activities within 15 sec of showing motivation, 80% opps
 - f. Verbally requests 5 different items or activities within 15 sec of showing motivation, 80% opps, 3 consecutive weeks, 3 people, 3 settings.

DISCUSSION

The petitioner is a six-year-old boy diagnosed with autism who has stopped most of his verbal communication. In March 2014, he knew many words and could spell complex words such as elephant flower, but no longer can. His therapist, [Redact] (formerly [Redact]), seeks to treat him twice a week for 26 weeks to address his verbal deficits and to help him use augmented language devices. He also receives therapy through his school district and from an in-home autism program. The primary question is whether the requested services duplicate those he already receives.

Medical assistance covers speech therapy if the recipient obtains prior authorization after the first 35 visits. Wis. Admin. Code § DHS 107.16(2)(b). When determining whether a service is necessary, the Division must review, among other things, the medical necessity, appropriateness, and cost of the service; the extent to which less expensive alternative services are available; and whether the service is an effective and appropriate use of available services. Wis. Admin. Code, § DHS 107.02(3)(e)1.,2.,3.,6. and 7. To be medically necessary, a service must be “[r]equired to prevent, identify or treat a recipient’s illness, injury or disability” and not be “duplicative with respect to other services being provided to the recipient.” Wis. Admin. Code § DHS 101.03(96m)(a) and (b)6.

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 therapists use different techniques or if one uses individual and the other group therapy. There are limits to this type of analysis. There has to be some reasonable expectation that the original therapist can accomplish what that therapist 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 that any requested therapy is necessary. If, as is true here, the initial issue that must be resolved before any other issues are addressed is whether the requested therapy duplicates therapy the petitioner already receives, he and his provider must establish by the preponderance of the credible evidence that duplication does not occur.

The school’s goals concentrate on using an augmented speech device, while the autism program’s concentrate on the petitioner’s verbal skills. **Redact** proposes a combination of the two. The petitioner’s representatives contends that the school’s services are inadequate and the autism program’s services are not provided by a real speech therapist. I find no credible evidence that the school’s professional cannot do what he or she is trained to do. The therapist is training the petitioner to use the same speech generating device as **Redact** uses; I assume that therapist is qualified to use and teach others to use this device. As for the workers at the autism program, they may not all be speech professionals, but they work under one and are trained to use the proper techniques. Furthermore, if the argument is that the autism program’s services are deficient, then the state should end them rather than spend large amounts of money required to maintain them. Like any medical assistance services they receive funding only if they are “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.” Wis. Admin. Code § DHS 101.03(96m)(b)2.

A related problem is that there is no proof that **Redact**’s services will work. Services must be of proven medical value to receive medical assistance funding. Wis. Admin. Code § DHS 101.03(96m) (b)5. Although **Redact** described some of the petitioner’s speech problems, it never objectively measured them. Breaking a problem down and determining its precise components is what allows a therapist to develop a solution to the problem. If a quarterback loses his ability to throw a football, it may be because of loss of strength, flexibility, or coordination; poor mechanics; or mental problems. Each of these particular deficits must be addressed with a different drill, so if one does not perform the testing needed to identify the specific source of the poor performance, one cannot, barring extraordinary luck, create the set of drills needed to regain good performance. Because **Redact** has identified the petitioner’s specific weaknesses, it has not shown that it can develop a plan that will effectively treat his communication problems.

For these reasons, I find that the petitioner has not established by the preponderance of the credible evidence that the requested therapy is medically necessary. Therefore, the Office of Inspector General's denial of that therapy is upheld.

CONCLUSIONS OF LAW

The requested speech therapy is not medically necessary because it duplicates therapy the petitioner already receives.

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

\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