



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/164398

PRELIMINARY RECITALS

Pursuant to a petition filed February 25, 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 26, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether evidence has been submitted on behalf of Petitioner that is sufficient to demonstrate that a prior authorization request for a speech language therapy (SLT) that was partially approved should have the frequency increased.

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: Mary Chucka, OT; by written submission

OIG

1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. A prior authorization (PA) request seeking speech language therapy (SLT) for Petitioner was filed by provider, HealthReach Rehabilitation, on or about January 14, 2015. That PA sought Medicaid

payment for 26 SLT sessions at a frequency of once per week commencing February 4, 2015. The cost was noted to be \$2340.00.

3. Petitioner is 11 years of age (DOB 9/6/03). The PA form notes, in the diagnosis section, Down's syndrome as the primary diagnosis and mixed language disorder as the secondary diagnosis. He lives at home. He is in school at the kindergarten - 1st grade level. There is no speech language therapy through the school as it is a private school. Petitioner's provider submitted a letter dated February 16, 2015 that indicates that Petitioner's expressive and receptive language skills are at a 3 ½ to 4 year old level.
4. Petitioner has been receiving SLT with Medicaid assistance since 2013.
5. The PA noted at Finding of Fact # 2 was approved with the modification that Medicaid payment be limited to 1 session every 2 weeks. More specificity is provided in Exhibit # 3 – a March 11, 2015 letter from the OIG and authored as noted under Parties in Interest, above.

DISCUSSION

The Division of Health Care Access and Accountability may only reimburse providers for medically necessary and appropriate health care services and equipment listed in Wis. Stat. §§ 49.46(2) and 49.47(6)(a), as implemented by Wis. Admin. Code, Ch. DHS 107. Some services and equipment require submission and approval of a written prior authorization request by the provider. Some services and equipment are never covered. Speech language therapy is a service that requires approval of a request for prior authorization. *See, generally, Wis. Admin. Code, DHS §107.18.* A PA is required after 35 lifetime SLT sessions. *Wis. Admin. Code, DHS, §107.18(3).*

When determining whether to approve any prior authorization, the Division of Health Care Access and Accountability (DHCAA) must consider the generic prior authorization review criteria listed at *Wis. Admin. Code, DHS § 107.02(3)(e)*. Those criteria are:

- (e) *Departmental review criteria.* In determining whether to approve or disapprove a request for prior authorization, the department shall consider:
1. The medical necessity of the service;
 2. The appropriateness of the service;
 3. The cost of the service;
 4. The frequency of furnishing the service;
 5. The quality and timeliness of the service;
 6. The extent to which less expensive alternative services are available;
 7. The effective and appropriate use of available services;
 8. The misutilization practices of providers and recipients;
 9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including medicare, or private insurance guidelines;
 10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
 11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
 12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.

The Wisconsin Administrative Code does define the term 'medical necessity'. It is a service that:

“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).

As with most public assistance benefits the initial burden of demonstrating eligibility for any particular benefit or program at the operational stage falls on the applicant, *Gonwa v. Department of Health and Family Services, 2003 WI App 152, 265 Wis.2d 913, 668 N.W.2d 122 (Ct.App.2003)*. In other words, it is Petitioner's burden to demonstrate that s/he qualified for the requested speech and language services by a preponderance of the evidence. It is not the OIG's burden to prove that s/he is not eligible. Further, I note that Medicaid is meant to provide the most basic and necessary health care services at a reasonable cost to a large number of persons and must authorize services according to the Wisconsin Administrative Code definition of medical necessity and other review criteria noted above.

The Department submitted a detailed written argument. Exhibit # 3. It is in the record and need not be reproduced here in detail. As I understand the Department's explanation/rationale it modified the PA because of a lack of submission of documented quantifiable progress and because the emphasis for Petitioner seems to be on slowing how fast he speaks and there is no demonstration as to why weekly SLT is needed to address that.

Petitioner was represented at hearing by his mother. She notes that he has made progress with SLT at 2 times per month but not as much as he did at once per week. She also notes that he had braces and appliances placed on his teeth about a year ago and has about a year to go with his orthodontics. This has affected his speech. Letters were submitted that indicate that SLT would be helpful for Petitioner.

I am declining to add to the Department's modification. The evidence does not demonstrate that increasing the SLT frequency from 2 times per month to 1 time per week is necessary or that the increase any more efficacious than the approved level of SLT. Petitioner has made progress at the current frequency of SLT and it is not clear why or how more SLT would change progress or why it is needed to address Petitioner's rate of speech.

The provider will not receive a copy of this Decision. Petitioner's family may provide a copy of this Decision to the provider.

CONCLUSIONS OF LAW

That the evidence presented on behalf of Petitioner is not sufficient to demonstrate that this prior authorization request for speech language therapy should be modified to increase the amount of SLT above that already approved by Medicaid.

THEREFORE, it is

ORDERED

That this 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 Milwaukee,
Wisconsin, this 20th day of May, 2015

\sDavid D. Fleming
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 20, 2015.

Division of Health Care Access and Accountability