



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

Redact

DECISION

Redact

MPA/165480

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 09, 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 May 26, 2015, at Wisconsin Rapids, Wisconsin.

The issue for determination is whether the Department erred in its denial of the requested OT services.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

Redact

by

Redact

Redact

Respondent:

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

By: Redact, OTR (in writing)  
Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Wood County. He is four years old.
2. Petitioner has a diagnosis of autism.

3. On 2/18/15 petitioner's provider submitted a PA request for OT services 4 times per week for 26 weeks at a cost of \$11,160. The focus of the request was on feeding, social skills, and sleeping habits.
4. The PA was returned to the provider for additional information. The provider submitted additional information to the Department.
5. Services began 2/18/15.
6. The PA request was denied on April 3, 2015.
7. Petitioner appealed.
8. At hearing, the provider stated that other insurance covered a portion of the services and the provider was now only seeking coverage from 2/18/15 to 3/31/15.

### DISCUSSION

OT is covered by MA under Wis. Admin. Code §DHS 107.17. Generally, OT is covered without need for prior authorization for 35 treatment days, per spell of illness. Wis. Admin. Code, DHS §107.17(2)(b). After that, prior authorization for additional treatment is necessary. If prior authorization is requested, it is the provider's responsibility to justify the need for the service. Wis. Admin. Code §DHS 107.02(3)(d)6. If the person receives therapy in school or from another private therapist, there must be documentation of why the additional therapy is needed and coordination between the therapists. Prior Authorization Guidelines Manual, p. 112.001.02, nos. 2 and 3.

In these types of cases, the provider has the burden to justify the provision of the service. WI Admin. Code DHS § 107.02(3)(d)6. The provider is required to prove the medical necessity for the requested fee-for-service OT services with accurate, clear, and objective clinical documentation. Each provider is solely responsible for the truthfulness, accuracy, timeliness, and completeness of PA requests. This includes the truthfulness, accuracy, timeliness, and completeness of the documentation necessary to support each PA request per DHS § 106.02(9)(e)1, Wis. Admin. Code. The documentation prepared by the provider must also be legible and concise per DHS § 106.02(a)(intro.), Wis. Admin. Code.

The mere assertion, even of a doctor or clinician, that a person needs a specific service *is not the same thing* as demonstrating with factual evidence the nature of the deformity, limitations, measurements of such deformities or limits, and clinical evidence that establishes such services are in fact medically necessary as that term is defined by the MA Program, and as applied to the specific services sought.

The DHS denied the requested OT because the occupational therapy Consultant could not determine the medical necessity of the requested services. The DHS complained that the evaluation did not provide sufficient objective measurements of the functional deficits and thus whether the requested services could address the deficits. The Department consultant could not infer why the skills of an occupational therapist were required to address the concerns of the parents such as that petitioner eats only a small variety of foods or has difficulty with sleep in that he prefers to have his mother there with him when he falls asleep. The Department also notes the example of the parents' concern that petitioner likes to play with older children and has difficulty sharing and will hit, pinch or push in order to get the toy that he wants.

At hearing, the provider was represented by Redact and Redact. They provided a disjointed argument which provided little more information that is discernable from the written record. Overall, I agree with the consultant that the need for OT is unclear and not documented adequately with clinical information; and the plan for treatment is vague. Overall, I remain unconvinced that OT is necessary to address the behaviors of concern. Petitioner is 4 years old. The idea that he wants a parent with him when he sleeps or eats a small variety of foods or has difficulty sharing may understandably cause some concern on the part of the parents. And, it is possible that OT could benefit petitioner. But, MA does

not cover every item or service that may benefit a person. It may be that I am not grasping the severity of the situation. If that is so, then I also not that it is the burden of the provider to convince the Department, or the ALJ, of that need. They have not done so based on this record.

### **CONCLUSIONS OF LAW**

The provider failed to establish the medical necessity of the requested OT services.

**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 Madison,  
Wisconsin, this 19th day of June, 2015

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\sJohn P. Tedesco  
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 June 19, 2015.

Division of Health Care Access and Accountability