



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION

MPA/165811

PRELIMINARY RECITALS

Pursuant to a petition filed April 29, 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 21, 2015, at Racine, Wisconsin.

The issue for determination is whether the Department of Health Services, Division of Health Care Access and Accountability, correctly denied [REDACTED]'s January 31, 2015 request to provide Occupational Therapy Services for Petitioner.

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: OIG by letter

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Racine County.

2. Petitioner is 13 years-old and has a primary diagnosis of congenital diplegia (cerebral palsy), with a secondary diagnosis of “muscle weakness”. (Exhibit 2, pg. 4)
3. On January 31, 2015, [REDACTED] ([REDACTED]), submitted on behalf of the Petitioner, a request for prior authorization of occupational therapy services at a rate of once per week for 13 weeks, at a cost of \$5,200. (Exhibit 2, pgs. 4 and 8)
4. The goals of the requested therapy are to:
 - a. Improve his upper body strength in shoulders to 3+/5 and hand grip strength by 3 pounds in order to don short socks (baseline: ...requires set up and mod A to place socks over all toes.)
 - b. Improve his upper body strength in shoulders to 3+/5 and finger pinch strength by 3 pounds in order to don his shoes (baseline: ...requires setup and Mod A to don his shoes.)
 - c. Demonstrate improved trunk strength and BUE strength to 3+/5 to don sweat pants with SBA for safety. He will use modified techniques; sitting to don each pant leg and then stand to pull sweat pants over buttocks. (baseline: ...requires max A to place legs in, min-mod A to pull over buttocks.)
 - d. In standing with min support will don coat and engage zipper, including zipping up/down with only set-up and verbal cues 2:3x.

(Exhibit 2, pg. 13)
5. Prior to the January 2015 request for services, DHS approved 14 consecutive requests for occupational therapy services beginning in December 2008. (See Exhibit 3, pgs. 15-28)
6. On February 24, 2015, the Department of Health Services (DHS) returned the request to [REDACTED] with PA error messages, seeking additional information regarding why the Petitioner needed continued services after 14 previous authorizations for therapy and why a home program would not be sufficient. (Exhibit 2, pgs. 31-35)
7. On March 10, 2015, [REDACTED] submitted to DHS its response to the PA error messages. (Exhibit 2, pgs. 36-44)
8. On March 26, 2015, DHS sent the Petitioner and [REDACTED] notices, advising them that the request for occupational therapy services was denied. (Exhibit 2, pgs. 45-51)
9. The Petitioner’s parents, on the Petitioner’s behalf, filed a request for fair hearing that was received by the Division of Hearings and Appeals on April 29, 2015. (Exhibit 1)
10. Petitioner has an Individualized Education Program and receives occupational therapy services once a week for 20 minutes and physical therapy services twice a week for 25 minutes. However, he will not receive services through an extended school year. (Exhibit 2, pgs. 23 and 25)
11. The goals of school-based therapy are:
 - a. Perform transfers with supervision between wheelchair and walker, walker and chair with arms, or wheelchair and chair with arms, 2 out of 3 trials. He currently needs contact guard to minimal assistance.
 - i. Propel his wheelchair up and down a 10’-15’ ramped surface independently, 1 out of 2 trials. Currently needs minimal assistance.
 - ii. Walk at least daily with his reverse wheeled walker and stand by assistance between classes on the same level. Currently walks 2 or 3 days per week and with contact guard to minimal assistance.

- iii. Walk with his reverse wheeled walker up and down a ramped surface with contact guard assistance, 1 out of 2 trials. Currently walks only on level surfaces
- b. Improve/maintain gross motor skills. He is currently functioning at approximately the 7-8 year old level in gross motor skills. Emphasis is needed on eye-hand coordination, strength, and endurance, along with participation in sport-like activities...
 - i. Lay prone on a scooter and attempt to pull and push himself forward and backward 12 feet or more with emphasis on using both hands and arms together while keeping head up in a straight line. 4/5x
 - ii. Lay supine on a scooter and propel himself backwards by flexing legs at the knees and hips and pushing against an object or hands of the instructor 3/5x.
 - iii. Pull an object attached to a rope with emphasis on using both hands equally, in a hand over hand/grasp and re-grasp motion with assistance as needed 3/5x.
 - iv. Roll and/or bounce a ball 8 to 10' to a partner or at pins using two hands while in a seated position (wheelchair) 3/5x.
- c. Improve his fine motor skills to facilitate legibly writing a 4 word sentence in 3 minutes (current: 5 minutes) and type 3 sentences in 5 minutes (current: 8 minutes).

(Exhibit 2, pgs. 20-22)

DISCUSSION

In the case at hand, the Petitioner requests authorization for an extension of occupational therapy services. Petitioner has the burden to prove, by a preponderance of the credible evidence, that the requested level of therapy meets the approval criteria.

Medical assistance covers occupational therapy if the recipient obtains prior authorization after the first 35 visits. Wis. Adm. Code § DHS 107.17(2)(b).

The Department of Health Services sometimes requires prior authorization to:

1. Safeguard against unnecessary or inappropriate care and services;
2. Safeguard against excess payments;
3. Assess the quality and timeliness of services;
4. Determine if less expensive alternative care, services or supplies are usable;
5. Promote the most effective and appropriate use of available services and facilities; and
6. Curtail misutilization practices of providers and recipients.

Wis. Admin. Code § DHS107.02(3)(b)

“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.”

Wis. Admin. Code §DHS107.02(3)(e)

“Medically necessary” is a legal term, referring to medical treatment 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. DHS 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. Adm. Code. §DHS 101.03(96m)

In addition to the above criteria, when there is a request for the extension of services, Wis. Admin Code §DHS 107.17(3)(e) states:

- e) *Extension of therapy services.* Extension of therapy services shall not be approved beyond the 35-day per spell of illness prior authorization threshold in any of the following circumstances:
 1. The recipient has shown no progress toward meeting or maintaining established and measurable treatment goals over a 6-month period, or the recipient has shown no ability within 6 months to carry over abilities gained from treatment in a facility to the recipient's home;

In its letter, DHS indicates that it denied the current request for occupational therapy services, because it could not determine whether the Petitioner has benefitted from prior therapy, nor whether continued

therapy would provide a benefit. More specifically, DHS indicated that [REDACTED] failed to clearly explain why the Petitioner is unable to perform certain tasks, failed to provide objective measurements of where Petitioner was before therapy began and failed to provide objective measurements of where the Petitioner is currently, so that DHS can determine whether the Petitioner has made progress over the course of his therapy and whether the Petitioner will continue to make progress with continued therapy.

This case is a close call, because we have a child that is clearly incapable of performing activities of daily living, like dressing, at age appropriate levels. However, after review of the records provided, it is found that DHS correctly denied the Petitioner's request for continued occupational therapy services.

The prior authorization therapy attachment, under Section II – Pertinent Diagnoses/Problems to be Treated, [REDACTED] indicates that the Petitioner suffers from increased upper extremity weakness, decreased grip strength, hypersensitivity to lower legs, etc. However, there is no objective measurement included in the description, such as, the Petitioner's upper extremity strength currently measures 1/5 on the Oxford Scale, or he can currently lift 2 pounds, or his range of motion in his left arm is 45 degrees, vertically. (See Exhibit 2, pg. 8)

Comparing the therapy goals contained in the current Occupational Therapy Plan of Care, dated January 6, 2015, with previous Plans of Care from May 9, 2012, June 6, 2013, and July 12, 2014, it is difficult to conclude the Petitioner has made reasonable progress through therapy. (See Exhibit 3, pages 7-14) For example, in May 9, 2012, there was a goal to don a coat and engage zipper with minimal assistance. In the January 2015 plan of care, the goal of donning a coat and engaging a zipper with minimal support appears as a new goal. This begs the question of what happened over the last three years and why that goal was not previously met or whether the Petitioner is not maintaining the skills he has learned..

In June 2013, a goal of increasing the Petitioner's upper body strength to 3/5 is stated, but that goal has carried through to the July 2014 plan of care and to the January 2015 plan of care. This again begs the questions of whether therapy has done anything to increase the Petitioner's strength and why he has not met that goal over the last 18 months.

Petitioner's occupational therapist indicated that the Petitioner has benefitted from therapy, because his finger and hand strength have improved so that he can open a sealed snack bag with minimal assistance, butter his bread with minimal assistance and independently hold and eat a sandwich. (Exhibit 2, pg. 43) However, there is nothing in the record to show that this is attributable to the occupational therapy he received from [REDACTED]

In summary, [REDACTED] did not include objective, measureable information in the prior authorization request regarding what Petitioner's prior level of ability was, nor where he is currently. Without a consistent, objective measurement of where the Petitioner was before therapy started and where the Petitioner is now, there is no way to know whether he has made reasonable progress. This lack of information is particularly concerning, since the goals of therapy have not changed significantly, despite the fact that the Petitioner has received prior therapy for seven years and has also received therapy through school. In the absence of sufficient information showing progress toward meeting or maintaining measureable treatment goals it is found that pursuant to Wis. Admin Code §DHS 107.17(3)(e), DHS correctly denied the request for authorization of occupational therapy services.

It should be noted that the Petitioner's provider may, at any time, file a new prior authorization request that contains the requisite information or it may file a new request, if Petitioner's condition regresses. However, it should also be noted to the Petitioner that his provider, [REDACTED], will not receive a copy of this Decision.

CONCLUSIONS OF LAW

DHS correctly denied [REDACTED]'s January 31, 2015 request to provide occupational therapy services to the Petitioner.

THEREFORE, it is

ORDERED

That the petition 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 12th day of June, 2015.

\sMayumi M. Ishii
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 12, 2015.

Division of Health Care Access and Accountability