



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION

MPA/165816

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 19, 2015, at Milwaukee, Wisconsin. The record was held open for the submission of additional information by the Petitioner's provider. Additional information was submitted on May 26, 2012 and the record was closed.

The issue for determination is whether the agency properly modified the Petitioner's request for PT services.

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

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

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County. She lives with her family.
2. The Petitioner's primary diagnosis is Chiari malformation. Additional diagnoses include lack of coordination, abnormality of gait, abnormal posture, and myoclonus. The Petitioner has a history of three major brain surgeries. She wears braces on her feet. She experiences dizziness and falls. She has cognitive deficits and sensory issues.
3. IEPs were developed for the Petitioner for the 2014-15 and 2015-16 school years. For 2014-15, the IEP reports that the Petitioner met all of her physical therapy gross motor skill goals, including: she is able to walk 50' in hallways with peers while staying in line and not bumping friends; she is able to walk 100' in line without reminders; she improved her running; she negotiates grass and playground uneven surfaces without instability; she is able to maintain safety on stairs when ascending and descending in a large group; she is functional in the school environment and interacts with peers on an age appropriate level. For 2015-16, the IEP notes that the Petitioner continues to excel with mobility in the school setting and on the playground. She has no reported falls on the playground and keeps up with her peers. She is running and jumping. She negotiates the hallways and classrooms. She has not shown any instability with walking. She is able to walk in a line with her peers. She is able to pull her chair out and push it in when at her desk. She is able to ascend and descend stairs with adult supervision. She has no gross motor concerns at school. She participates in regular physical education classes. She receives no PT at school.
4. Petitioner had an initial evaluation for PT services at [REDACTED] on or about August 5, 2014. She was re-evaluated at [REDACTED] on January 21, 2015. Petitioner's mother reported that she is concerned about the Petitioner's stability as she trips a lot and fatigues quickly. It was reported that she has not had two or more falls in the past year. It is further noted that the Petitioner had brain surgery on June 23, 2014. The following goals were established and updated:
 - Floor to stand transitioning: the evaluation notes that at the initial eval on August 5, 2014, the Petitioner had moderate difficulty. In January, the Petitioner was reported to have mild difficulty. The goal is for her to have no difficulty.
 - Squatting from standing: at the initial eval on August 5, 2014, the Petitioner had mild difficulty. In January, it was noted that the Petitioner met her goal of no difficulty with this task.
 - Single limb stance – at the initial eval on August 5, 2014, the Petitioner had severe difficulty. In January, it was noted that the Petitioner continues to have severe difficulty with a goal of no difficulty.
 - Walking backwards: at the initial eval on August 5, 2014, the Petitioner had mild difficulty. In January, the Petitioner was noted to have mild difficulty with a goal to have no difficulty.
 - Jumping down: at the initial eval on August 5, 2014, the Petitioner had severe difficulty. In January, the Petitioner had mild difficulty with a goal of no difficulty.
 - Walking down stairs: at the initial eval on August 5, 2014, the Petitioner had no difficulty. In January, it was reported that she had severe difficulty with a goal of no difficulty.
 - Jumping forward: at the initial eval on August 5, 2014, the Petitioner had moderate difficulty. In January, she had moderate difficulty with a goal of no difficulty.

The Petitioner was administered the Peabody Developmental Motor Scale. For Stationary scale, she score in the 16% with an age equivalency of 46 months. For locomotion, she scored in the

9% with an age equivalency of 42 months. For object manipulation, she scored in the 25% with an age equivalency of 50 months. For gross motor, she scored in the 10% with a below average performance compared to same aged peers.

Functional goals were also established in August, 2014 and updated in January:

Improve balance and coordination by picking up 4/5 toys from the floor using proper squatting pattern and without use of UE on ground to return to standing. Goal was met by January.

Descend 4 steps without use of rail and step over step pattern independently to improve mobility and safety at home. In January, Petitioner was noted to continue to lack balance and eccentric control to descend steps with step over pattern without use of rail.

Improve balance and coordination by jumping down 12 inches with two foot takeoff and landing with stand by assist to improve use of playground with peers. In January, Petitioner was able to complete the motion and jump with two foot take off and landing but needs assistance for balance upon landing.

Improve coordination between UE and LE by timing UE swing with knee extension when jumping forward 20 inches with two foot take off and landing to improve use of playground with peers. In January, Petitioner was noted to be improving well with coordination of LE and UE as she is able to jump 18 inches forward.

Improve strength and balance to stand on left and right LE for 5 seconds with hands on hips to improve negotiation of tight spaces and stairs. In January, it was noted that she lacks the balance and proprioception to maintain single leg standing for more than 2-3 seconds.

5. On February 3, 2015, the Petitioner's provider submitted a PA request for PT services 1x/week for 12 weeks. On March 11, 2015, the Petitioner re-submitted a PA request for PT services, 1x/week for 12 weeks.
6. On March 18, 2015, the agency modified the Petitioner's PA request and approved 3 PT sessions over a 12 week period.
7. On April 29, 2015, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

Physical therapy is covered by MA under Wis. Admin. Code, §DHS 107.16. Generally it is covered without need for prior authorization (PA) for 35 treatment days, per spell of illness. Wis. Admin. Code, §DHS 107.16(2)(b). After that, PA for additional treatment is necessary. If PA is requested, it is the provider's responsibility to justify the need for the service. Wis. Admin. Code, §DHS 107.02(3)(d)6. 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. Adm. Code, § DHS 107.02(3)(e)1.,2.,3.,6. and 7.

In reviewing a PA request the DHCAA must consider the general PA criteria found at §DHS 107.02(3) and the definition of "medical necessity" found at §DHS 101.03(96m). §DHS 101.03(96m) defines medical necessity in the following pertinent provisions:

"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; ...
7. Is not solely for the convenience of the recipient, the recipient's family or a provider;
8. ...[I]s 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.

The agency interprets the code provisions to mean that a person must continue to improve for therapy to continue, specifically to increase the ability to do activities of daily living. In addition, at some point the therapy program should be carried over to the home, without the need for professional intervention.

The agency contends that the PA was justifiably modified because the provider did not document why the requested direct PT services are needed at the requested intensity of 1x/week for 12 weeks. It asserts that the PA request does not offer justification that the level of service approved – intermittent treatment, re-evaluation and revisions as necessary to the home exercise program (HEP) – is inappropriate to meet the member's needs as documented. The agency concluded that there is insufficient documentation that the Petitioner will improve her skills more with weekly direct PT than with the approved 3 sessions and home exercise program. It notes that the only objective measurements provided (Peabody test scores) indicate that Petitioner has not continued to make progress with direct PT and that the school has discontinued PT because the Petitioner has met her goals and is functional in that setting.

The petitioner and her provider have the burden of proving by the preponderance of the credible evidence that the requested service meets the agency's definition and interpretation of medical necessity. The Petitioner's provider disputes the agency's assertion that the Petitioner has plateaued. The therapist noted that the Petitioner had brain surgery in June, 2014 and that the Petitioner needed time to recover. She argues that the fact that the Petitioner maintained her status during this time of recovery demonstrates progress. She further noted that the January, 2015 evaluation does indicate progress made by the Petitioner and that the agency's reliance on the Peabody tests does not give a complete picture of the Petitioner's progress.

The therapist also asserts that the Petitioner does not have the cognitive ability to allow for full use of the HEP and that the Petitioner's parents do not have the professional skills she needs to fully administer the HEP. In addition, the Petitioner's provider testified that the Petitioner has developed issues with limping, decreased mobility and pain. She noted that she previously had these issues and had surgery to relieve pressure on her spinal cord in an attempt to resolve these issues. She testified that the Petitioner's providers are looking for a resolution as to why this is happening.

Based on the evidence presented, I conclude that the agency's modification of the PA request is appropriate to meet the Petitioner's current needs. It is the provider's and Petitioner's burden to provide sufficient evidence to demonstrate that the Petitioner is making progress toward meeting measurable treatment goals. The January, 2015 evaluation provides some information but does not provide any objective measurements of the Petitioner's progress. I recognize the provider's argument that the Petitioner's medical condition may be a factor but the Peabody test scores along with the school reports

that she is able to negotiate stairs, uneven surfaces, navigate the environment without significant difficulty and interact on an age-appropriate level to the point that she met all goals and no longer requires direct PT services at school supports the agency's conclusion that three sessions and a home exercise program are appropriate for the Petitioner's current needs. Though there is an argument that the Peabody scores are not the best indicator of the Petitioner's progress, the January evaluation does not contain other objective measurements of the Petitioner's progress.

There is not sufficient evidence that Petitioner's coordination or strength would be significantly improved by exercising once/week with the therapist. Rather, the evidence suggests that exercise through a home exercise program and participation in her current activities of dance and gymnastics or other like activities are appropriate. For the requested services to be approved, the provider needed to provide evidence that there are certain techniques that only the therapist can provide and that without these techniques the petitioner will be unable to accomplish her goals.

In addition to the specific techniques and what they would accomplish, the provider needed to demonstrate why the Petitioner's parent could not perform the exercises at home. There was not a sufficient explanation why the expertise of a therapist is required once a week to perform exercises that will lead to squatting, standing up, jumping and going up and down stairs. It is clear from the letters and testimony by the Petitioner's parents that they are competent and intelligent, so I would not anticipate any difficulty in the family being able to follow the physical therapist's instructions. In addition, the record indicates that the petitioner's parents have worked extremely hard to ensure that her needs are met, which indicates that they will put the time enough time into her home exercise program for it to be beneficial.

At the hearing, the Petitioner's parents and provider reported that the Petitioner is having increasing difficulty with limping, general mobility and pain. They testified that she was scheduled for an MRI to determine the cause and that another brain surgery might be needed to address these issues. Until a cause for these issues is found, approving PT to address these symptoms would not be appropriate.

The agency has approved three sessions so that the therapists can develop and monitor a home exercise program. This should be enough to allow the therapist to properly instruct Petitioner's family on the proper techniques needed to improve her strength and coordination sufficiently to meet the goals set by the provider. Therefore, I find that the Petitioner and provider have not demonstrated that more direct therapy would be either cost effective or medically necessary. I uphold the agency's decision.

CONCLUSIONS OF LAW

The agency properly modified the Petitioner's request for PT services.

THEREFORE, it is

ORDERED

That 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 Milwaukee,
Wisconsin, this 17th day of July, 2015

\sDebra Bursinger
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 July 17, 2015.

Division of Health Care Access and Accountability