



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION

MPA/167396

PRELIMINARY RECITALS

Pursuant to a petition filed July 15, 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 September 15, 2015, at Kenosha, Wisconsin. The record was held open post-hearing for the Petitioner to submit additional evidence. Additional evidence was submitted on September 28, 2015 and the record was closed.

The issue for determination is whether the agency properly denied the Petitioner's PA request.

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: Laura Ronowski

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 Kenosha County. Petitioner is 13 years old and lives with his family.

2. Petitioner's diagnoses include autism, oppositional defiant disorder, ADHD and anxiety.
3. Petitioner attends school. He does not have an IEP at school.
4. On April 10, 2015, the Petitioner's provider, Tender Touch Therapy, performed an initial evaluation of the Petitioner. At the initial evaluation on April 10, 2015, the family's primary concern was noted to be the Petitioner's limited variety of food intake. Family also reported that the Petitioner gags during meals and has a limited number of foods he will eat. The assessor reported that the Petitioner has appropriate communication skills and speech and language skills. She diagnosed mild dysphagia characterized by OM weakness and discoordination and decreased ROM, impairing oral bolus prep, transit and clearance. She also noted Petitioner has hypersensitive aversiveness with overprotectiveness of aerodigestive tract as evidenced by moderately elevated and retracted laryngeal position at rest and significantly limited ROM during oral prep apparent to palpation of genioglossal base and hyolaryngeal excursion.
5. On April 14, 2015, the Petitioner's provider, Tender Touch Therapy, submitted a PA request on behalf of the Petitioner requesting a swallowing evaluation (Procedure Code 92610) and oral function therapy (Procedure Code 92526), 1x/week for 26 weeks. The information submitted with the PA indicates that the factors involved in the Petitioner's issues include a combination of neuromuscular (weakness and incoordination) and sensory (in relation to certain consistencies and texture that are more difficult to prepare orally) which over time without intervention have created learned behavioral patterns resulting from negative and ineffective feeding experiences. It also notes that the Petitioner can eat independently. The attached plan of care reports that skilled interventions may include therapeutic handling to increase tongue strength/stability and appropriate postural support/alignment including ribcage mobility, laryngeal massage, oral motor exercise program design for home implementation to be adjusted as needed based upon analysis of response to intervention, teaching/training Petitioner and mother for HEP. It further indicates that the goal is to increase effectiveness of oral prep and transit patterns, increase functioning of orofacial/suprahoid musculature for effective PO ingestion, increase variety of food accepted to nearer age-expected levels, expand variety of tastes/textures/consistencies to be able to increase nutritive intake.
6. On June 20, 2015, the agency issued a notice to the Petitioner informing him that the agency denied the Petitioner's request for therapy services.

DISCUSSION

Speech and language therapy is an MA-covered service, subject to prior authorization after the first 35 treatment days. Wis. Admin. Code, §DHS 107.18(2). In determining whether to approve such a therapy request, the Bureau employs the generic prior authorization criteria found at §DHS 107.02(3)(e). Those criteria include the requirements that a service be medical necessary, appropriate, and an effective use of available services.

To be reimbursed for speech language therapy under procedure code 92526:

“The member must have an identified physiological swallowing and/or feeding problem. This is to be documented using professional standards of practice such as identifying oral phase, esophageal phase or pharyngeal phase dysphagia, baseline of current swallowing and feeding skills not limited to signs of aspiration, an oral mechanism exam, report of how nutrition is met, current diet restrictions, compensation strategies used, and level of assistance needed.”

ForwardHealth Therapy Handbook, Topic #2794.

The agency denied the Petitioner's request for speech language therapy. It asserts that the documentation indicates that the Petitioner has a sensory based motor disorder. With regard to chewing and swallowing, it noted that the documentation indicates his motor function is within normal limits. It notes that the Petitioner will consume subs, chicken tenders and nuggets, chicken sandwich, cheese bread, pepperoni sticks, roasted potatoes, tater tots, milk, pizza and rice. It notes that there is documentation that some of his restrictions are from learned behavioral patterns. The agency concluded that there is an absence of evidence to demonstrate a physiological swallowing problem and an absence of goals to improve a physiological swallowing problem. Therefore, procedure codes 92610 and 92526 cannot be approved.

The agency further asserts that, as a result of a demonstrate physiological swallowing problem, the requested service does not meet the definition of a "medically necessary" service for purposes of MA coverage.

The Petitioner's therapist argues that although the Petitioner has the ability to chew and swallow and can do so with preferred food items, this is consistent with a mild dysphagia diagnosis. She cites the National Dysphagia Diet Level 3 Mechanically Advanced which consists of foods of nearly regular textures with the exception of very hard, sticky or crunchy foods. She noted that the Level 3 diet is considered to be a transition to a regular (ie general consistency) diet. She states that the Petitioner has learned to restrict his diet to foods that he is physiologically able to manage for oral prep and ingestion. She asserts the skills of a therapist are required to remediate the Petitioner's physiological swallowing impairment.

At the hearing, the Petitioner's mother testified that the Petitioner does not like food to touch his mouth, has issues with different textures and that he has severe sensory problems. She stated he has no problems with speech. He has no problems with choking or coughing. He is at normal weight. She stated that he will not try new foods.

Based on the evidence presented, I conclude that the agency properly denied the Petitioner's PA request for speech language therapy. Though there is a diagnosis of mild dysphagia for the Petitioner, the presence of a diagnosis alone is not sufficient to demonstrate the "medical necessity" of a requested service. The ForwardHealth Manual provisions require the agency to consider current levels of nutrition, current diet restrictions and level of assistance needed. While the Petitioner's diet is limited, it is not so limited as to affect his ability to achieve adequate nutrition. There is no evidence that he requires assistance to chew and swallow. He is able to eat quite a number of foods that require a mechanically advanced level of chewing and swallowing. In addition, while there is a diagnosis of mild dysphagia, the evidence is not clear that this is the primary problem with the Petitioner and that therapy to address this issue will resolve his eating problems. There is ample evidence that the eating issue is related to a sensory problem as well as behavioral problems. Without sufficient evidence that it is the physiological problem that is causing the Petitioner's problems rather than the sensory or behavioral issues, there is insufficient evidence of the "medical necessity" of the requested service.

CONCLUSIONS OF LAW

The agency properly denied the Petitioner's request for speech language therapy.

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 20th day of November, 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 November 20, 2015.

Division of Health Care Access and Accountability