



**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

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

DECISION

MPA/168341

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 27, 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 October 08, 2015, at Waukesha, Wisconsin.

The issue for determination is whether the Department of Health Services, Division of Health Care Access and Accountability correctly denied [REDACTED]' request for prior authorization to provide occupational therapy services to the Petitioner.

NOTE: The record was held open to give Petitioner's father an opportunity to submit additional evidence. On October 11, 2015, Petitioner's father submitted a letter from the Petitioner's gymnastics coach and with his permission this letter was forwarded to DHS's occupational therapy consultant. The letter has been marked as Exhibit 5. DHS submitted its response on October 14, 2015; it has been marked as Exhibit 6.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

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

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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 Waukesha County.
2. In 2014, a home plan was developed with [REDACTED] (Testimony of Petitioner's father)
3. Petitioner's mother is certified in special education and has worked with the Petitioner to improve her hand strength by having her hold crayons, play with play dough and stretching her thumbs, which get tucked under her palms. (Testimony of Petitioner's father)
4. On April 23, 2015, [REDACTED] completed an Occupational Therapy Initial Evaluation for Petitioner who was then 2 years, 10 months old at the time. The Petitioner has since turned three. (Exhibit 4, pg. 13; Testimony of Petitioner's father)
5. The Occupational Therapy evaluation was performed because the Petitioner's mother had concerns about the Petitioner's ability to grasp and about Petitioner's body awareness. (Exhibit 4, pg. 13)
6. Petitioner was born addicted to drugs and might be suffering secondary complications from that trauma. (Exhibit 4, pg.13)
7. The Petitioner scored slightly below average for grasping and average for visual-motor integration. (Exhibit 4, pg. 16)
8. The Petitioner was determined to have age appropriate self-care and fine motor skills. (Exhibit 4, pg. 16)
9. The Petitioner was deemed to have "decreased awareness and attention in a busy setting. Sensory seeking." (Id.)
10. On May 26, 2015, [REDACTED] [REDACTED] [REDACTED], on behalf of the Petitioner, submitted a Prior Authorization Request, seeking coverage of an occupational therapy evaluation and twelve sessions of Neuromuscular Reeducation, Therapeutic Activities and Self-Care Management Training at a cost of \$2,062.00. Sessions are intended to be once a week. (Exhibit 4, pgs. 5 and 17)
11. The goals of therapy were stated as follows:
  - a. Attend to 1-2 step activity in a busy setting with minimal verbal cues or attention and body awareness, 2 of 3 sessions. Baseline: frequently distracted by visual or auditory stimuli. Decreased body awareness for people and objects.
  - b. Utilize fork and spoon efficiently and independently, 2 of 3 sessions. Baseline: Able to use but not well; demonstrate inefficient grasp.

(Exhibit 4, pg. 17)
12. On June 8, 2015, DHS sent [REDACTED] a letter asking them to:
  - a. Attach supportive documentation; individual education plan and written evidence of treatment coordination with other providers.
  - b. Describe the reason, based on the member's cognitive, physical, or communication, or resource status, that a home program, equipment or environmental adaptations alone cannot meet the member's needs.

(Exhibit 4, pg. 19)

13. On June 24, 2015, ██████████ responded with a one page letter from the Petitioner's therapist, indicating the Petitioner had no IEP. The letter indicated, "a home program, equipment or environmental adaptations alone would not be appropriate because the following skills of a therapist will be utilized to meet the child's needs." (Exhibit 4, pg. 27)
14. On July 20, 2015, DHS sent the Petitioner and ██████████ notices, advising them that the request for occupational therapy services was denied. (Exhibit 4, pgs. 28-34)
15. 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 August 31, 2015. (Exhibit 1)

### DISCUSSION

In the case at hand, ██████████ requested prior authorization to provide occupational therapy services to the Petitioner. In such circumstances, the Petitioner has the burden to prove, by a preponderance of the credible evidence, that the requested level of therapy meets the approval criteria. Estate of Gonwa ex rel Gonwa v. Wisconsin Dept. of Health and Family Services, 265 Wis.2d 913, 668 N.W.2d 122, 2003 WI App. 152

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 states that it denied the prior authorization request, because, while Petitioner's physician opined that the Petitioner is not developing as one might expect, the testing done by [REDACTED] [REDACTED] supports a somewhat contrary conclusion. In other words, the Petitioner has not demonstrated a deficit so significant that she needs the skills of an occupational therapist.

DHS points to [REDACTED] own evaluation, which showed the Petitioner to be slightly below average in grasp; scoring 7, when scores of 8-12 indicate average functioning, and which showed the Petitioner to be average in visual motor integration, scoring 12, when scores of 8-12 indicate average functioning. Petitioner's fine motor quotient was 97, which also indicates average functioning.

DHS also points to the portion of [REDACTED] evaluation, which indicates the Petitioner has age appropriate self-cares and age appropriate fine motor skills. So, it is not clear why the Petitioner needs the requested therapies.

I note that [REDACTED]'s one page response to DHS's request for further information was rather inadequate in explaining why a home program would not be appropriate. It merely said a home program was not appropriate because the Petitioner was going to receive skilled OT services. This was not a good explanation for why a home program would not be enough to improve the Petitioner's functioning.

I also note that the prior authorization request is inadequate for the following reasons:

- 1) It does not explain why the Petitioner might be distracted in a busy setting, nor does it describe what visual/auditory stimulation was present.
- 2) It does not explain with any specificity how this was determined.
- 3) The baseline, "frequently distracted by visual or auditory stimuli. Decreased body awareness" is not an objective measurement of the Petitioner's problem. That is a subjective statement that could mean anything.
- 4) The baseline, "Able to use, but not well; demonstrates inefficient grasp" is not an objective measurement of the Petitioner's problem with using eating utensils. It is again a subjective statement that could mean anything.
- 5) It does not explain how the Petitioner's hand grasp was measured, nor why she might have poor hand grasp.

It is also troubling that there was no mention of the home plan that was previously put in place and no information regarding where the Petitioner was performing before the home plan and where she is now. While it might have been difficult to differentiate between progress made due to natural development and progress made through therapy or a home program, this is something that should have been mentioned by [REDACTED].

In summary, it is clear that Petitioner might have some deficits. However, [REDACTED] did not provide sufficient medical documentation showing that the Petitioner suffers such severe deficits that she needs intervention from an occupational therapist at this time. Indeed, their own evaluation suggests that the Petitioner is only slightly delayed in her development. In addition, [REDACTED] provided no clear, adequate explanation for why Petitioner's delays could not be addressed with a home program.

**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 her provider, [REDACTED], will not receive a copy of this Decision.**

#### CONCLUSIONS OF LAW

DHS correctly denied [REDACTED] May 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 9th day of November, 2015.

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\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 November 9, 2015.

Division of Health Care Access and Accountability