



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████████
c/o ██████████
██████████
██████████

DECISION

MPA/168625

PRELIMINARY RECITALS

Pursuant to a petition filed September 08, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Office of the Inspector General (OIG) in regard to Medical Assistance, a telephonic hearing was held on October 13, 2015, at Janesville, Wisconsin.

The 10 year old petitioner, ██████████, was represented by the program's case manager, ██████████, at ██████████ during and after the hearing. During that hearing, petitioner's representative requested that the record be held open for documents to be submitted to the Division of Hearings and Appeals (DHA), and then for those documents to be sent to the Office of the Inspector General (OIG) for a reconsideration decision with an opportunity for a reply by Ms. ██████████.

During the hearing, Ms. ██████████ indicated that the approximately 2 ½ months of CADT services by ██████████ have already been provided to the petitioner during the period from July 17, 2015 to October 2, 2015 since the July 17, 2015 PA was submitted to OIG.

This Administrative Law Judge (ALJ) sent an October 30, 2015 cover letter to Ms. ██████████ at the Office of the Inspector General (OIG) with a copy of the following documents: a) Exhibit 2 – a cover letter and September 23, 2015 detailed rebuttal letter responding to each of the reasons provided by Ms. ██████████ in her September 15, 2015 denial summary (Exhibit 1); and b) Exhibit 3- the petitioner's Mental Health Services Discharge Summary from ██████████. In that same letter, this ALJ requested that Ms. ██████████ review the enclosed documents, and submit a reconsideration summary to me at DHA by November 10, 2015 with a copy of that reconsideration summary letter should to be sent to the petitioner's representative. The petitioner's representative was granted until November 20, 2015 to submit any written response to Ms. ██████████'s reconsideration summary.

However, on October 30, 2015, Ms. ██████████ sent about 30 pages of additional information to DHA. This ALJ contacted OIG, and requested that Ms. ██████████'s reconsideration also review the additional 30 pages of documents in addition to the documents indicated in the above paragraph.

OIG sent a 7 page, detailed November 13, 2015 Reconsideration to DHA, petitioner's father and Ms. ██████████. Neither Ms. ██████████ nor the petitioner's parent submitted any response to DHA by November 20, 2015 or even by the date of this decision.

The issue for determination is whether the Department correctly denied the petitioner's July 17, 2015 prior authorization (PA) request for Child/Adolescent Day treatment (CADT) during the period of July 22, 2015 to October 2, 2015, by the provider, ██████████, because the provider failed to establish with timely, complete and reliable documentation that CADT services were appropriate, cost effective and medically necessary for the petitioner.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████
c/o ██████████
██████████
██████████

Representative:

██████████, case manager
████████████████████
████████████████████
████████████████████

Respondent:

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

By: ██████████, nurse consultant
Office of the Inspector General (OIG)
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 10 year old resident of Rock County who resides with his adoptive family (father and two brothers).
2. The petitioner has been enrolled in the Medicaid program since October, 2014.
3. The petitioner is diagnosed with diabetes and has several “provisional” diagnoses that had not been confirmed by any psychiatrist or mental health expert as of the October 13, 2015 hearing date (pervasive developmental disorder, Autism Spectrum Disorder, ADHD, and Reactive Attachment Disorder and PTSD).
4. The petitioner does have behavioral issues and a history of angry outbursts both at school (especially during the second half of his school day) and outside of school.
5. During a psychological assessment, petitioner consulted with a psychologist, ██████████ on July 14, 2015. Dr. ██████████ referred the petitioner for an assessment at the Waisman Center which is a resource for people with developmental disabilities and their families, providing services such as clinical diagnosis, genetic counseling, treatment and intervention, and early childhood education. However, the provider inaccurately indicated on the PA request that petitioner’s assessment would be on July 16, 2015, when in actuality such clinical assessment is not scheduled to take place until during February, 2016 (more than 4 months after the completion of petitioner’s CADT services).
6. On or about July 17, 2015, petitioner’s provider, ██████████ requested on behalf of the petitioner 13 weeks of Child/Adolescent Day Treatment (CADT) services about five hours a day, five days a week at a cost of \$48,501.00 with a requested start date of July 22, 2015.

7. The Department sent an August 18, 2015 notice to the petitioner denying the petitioner's PA request for CADT services due to other less expensive and appropriate services are available which may safely and effectively meet the member's medical needs.
8. Despite the CADT denial, the provider, [REDACTED], continued to provide CADT services for the petitioner from July 22, 2015 to October 2, 2015.
9. OIG consultant, [REDACTED] [REDACTED], sent a September 15, 2015 summary letter to DHA and to petitioner which provided the following reasons for the denial of the PA for CADT services: a) the provider's documentation failed to substantiate the member meets all policy and coverage criteria which include the requirement that the services are consistent with the member's signs and symptoms, and treatment of a valid, diagnosed mental disorder; b) the provider failed to establish that petitioner's medically necessary health care services are not coverable as HealthCheck "Other services;" c) the provider failed to submit the results of the Waisman Center evaluation of petitioner which allegedly was scheduled to be performed on July 16, 2015 (which later was determined to be only an "intake" appointment; d) the provider failed to justify the clinical rationale for CADT services, a mental health services, as opposed to autism treatment; d) it is the provider's duty to justify the provision of CADT services with reliable documentation and petitioner failed to do so; e) the provider failed to establish with reliable, timely documentation that the petitioner's signs and symptom and treatment of a valid, diagnosed mental disorder met the Department's criteria to authorize the requested CADT treatment.
10. While the record was held open, the petitioner's representative and provider submitted new evidence to OIG for a Reconsideration summary to DHA and to petitioner. See Preliminary Recitals above.
11. The OIG mental health consultant, [REDACTED] [REDACTED], sent a detailed, 7 page November 13, 2015 Reconsideration summary to the petitioner's father, Ms. [REDACTED], and to DHA which established the following reasons for the continued denial of reimbursement for the CADT services provided to petitioner: a) the provider failed to timely submit the required prior authorization and required documentation to OIG **prior** to the July 22, 2015 start of CADT services for petitioner; b) the provider failed to establish that petitioner met criteria to be eligible for coverage of CADT, a Health Check services; c) the provider failed to complete new testing or evaluation necessary for the development of an effective treatment plan; d) services are non-reimbursable under the MA program unless the documentation requirement is met per DHS 106.02(9)(f), Wis. Admin Code; e) the actual February, 2016 assessment of petitioner at the Waisman Center will be taking place six (6) months **after** the start date of the CADT services (July 22, 2015); f) the provider failed to submit the differential diagnostic evaluation, required to be performed **prior** to providing CADT services, documenting the signs and symptom and correlating these to potential diagnoses, and discussing the reasons for and against potential diagnoses; g) the provider failed to submit a thorough, comprehensive, initial multidisciplinary assessment, including any new test or evaluation necessary for the development of an effective CADT treatment plan; h) the provider failed to establish that the requested CADT services were cost-effective as compared to alternative services; i) provider failed to establish CADT services to be the most appropriate and cost effective service that can safely and effectively be provided for the petitioner; and j) the PA in this case must be denied because the documentation for the PA request is incomplete and medical necessity criteria have not been met.
12. Neither Ms. [REDACTED] nor the petitioner's father submitted any written response to DHA regarding OIG's November 13, 2015 Reconsideration summary (Finding of Fact #11 above) by November 20, 2015 or even by the date of this decision. See also above Preliminary Recitals.

DISCUSSION

The petitioner and his provider, [REDACTED], seek reimbursement for 13 weeks of Child/Adolescent Day Treatment (CADT) Services about five hours a day, five days a week at a cost of \$48,501.00 during the period of July 22, 2015 to October 2, 2015. The Office of Inspector General (OIG) denied the request for a variety of reasons, including that the services were provided before the request was made and proper, complete documentation was submitted, and the requested CADT was not established to be cost effective, appropriate or medically necessary.

The Office of Inspector General indicates that this is a “HealthCheck—Other Service” covered under Wis. Admin. Code, § DHS 107.22(4), a catch-all category applying to any service described in the definition of “medical assistance” found at 42 USC 1396d(a). Day treatment mental health services for children under 18 are more specifically covered by Wis. Admin. Code, Chapter DHS 40. To qualify for services, a child “must have a primary psychiatry diagnosis of mental illness or severe emotional disorder.” Wis. Admin. Code, § DHS 40.08(3)(a). “Mental illness ” is defined as a “medically diagnosable mental health disorder which is severe in degree and which substantially diminishes a child's ability to carry out activities of daily living appropriate for the child's age.” Wis. Admin. Code, § DHS 40.03(16). Each child is evaluated by a psychologist or psychiatrist and has a treatment plan approved by a program. Wis. Admin. Code, §§ DHS 40.08(4) and 40.09(2)(c). Like any medical assistance service, it must be **medically necessary, cost-effective, and an effective and appropriate** use of available services. It must also meet the “limitations imposed by pertinent...state...interpretations.” Wis. Admin. Code § DHS 107.02(3)(e)1.,2.,3.,6., 7, and 9. Wis. Admin. Code.

"Medically necessary" is defined in Wis. Admin. Code § DHS 101.03(96m) as a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability;
- (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. HFS 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.

[REDACTED] requested 13 weeks of CADT services for the petitioner at a cost of \$48,501 on or about July 17, 2015 before provider submitted timely the required, complete PA documentation to the Department. See Findings of Fact #8, #9, and #11 above.

Wis. Admin. Code, § DHS 107.02(3)(c) states: “If prior authorization is not requested and obtained **before** a service requiring prior authorization is provided, reimbursement shall not be made except in extraordinary circumstances such as emergency cases where the department has given verbal authorization for a service.” This rule is not absolute. Wis. Admin. Code, § DHS 106.03(4)(a), which is found in the chapter in the administrative code pertaining to the provider’s rights and responsibilities, allows an exception to this general rule “[w]here the provider’s initial request for prior authorization was denied and the denial was either rescinded in writing by the department or overruled by an administrative or judicial order.” In this case, petitioner’s provider did not timely submit its PA for petitioner, and did not obtain timely verbal authorization for CADT services for petitioner.

This rule is needed because it can often take weeks or months for the Division to review requests for needed therapy. This especially creates problems if the request is for continuing or follow-up services and the lack of approval can interrupt ongoing treatment. But the preferred method is for the Office to review the request before services begin because it, unlike the Division of Hearings and Appeals, has medical training in the area under review that allows it to provide an expert opinion on whether the service is necessary. When reviewing a matter in which the services begin before being approved, Hearings and Appeals must look at all of the circumstances of the case.

The petitioner and his provider have the burden of proving that the requested services are medically necessary and cost-effective. By receiving therapy from [REDACTED] just five days after submitting the incomplete PA request, the provider prevented the Division from adequately determining whether those services were medically necessary and cost-effective when compared to other potentially available services. Although [REDACTED] has significant problems, neither the evidence in the file nor the testimony at the hearing established that waiting a few weeks for the Division to review his matter to determine whether the requested services were medically necessary and cost-effective would have significantly hindered his recovery. Therefore, the exception in Wis. Adm. Code, § DHS 107.02(3)(c) to the general rule that recipients must obtain prior authorization before receiving services does not apply.

See also other DHA decisions where CADT providers that have begun CADT services before submitting a complete prior authorization request. *See DHA Decision Nos. MPA 58/10823, MPA/35/139624, MPA/142947, MPA/142933, MPA/143218, and MPA/147603.* In those appeals, the Department was found to have correctly denied those CADT PA requests. Moreover, even if the request had been filed on time, the petitioner has not met his burden of showing that this CADT PA request is cost-effective, appropriate, and medically necessary treatment.

During the October 13, 2015 hearing, neither the petitioner’s representative ([REDACTED]) nor any of the petitioner’s witnesses were able to present any specific, reliable testimony or evidence to refute the Departmental reasons for denial of the CADT request, as indicated in Finding of Fact #11 above. Instead, the testimony of both Ms. [REDACTED] and the other witnesses were rather disorganized, vague and lacking in sufficient specificity to be reliable or persuasive. Furthermore, petitioner’s representative failed to submit any response to the Department’s persuasive November 13, 2015 Reconsideration summary by November 20, 2015 or even by the date of this decision. Neither Ms. [REDACTED] nor his father were able to refute with any convincing evidence that OIG incorrectly denied the petitioner’s PA request. Accordingly, for the above reasons, I conclude that the Department correctly denied the petitioner’s July 17, 2015 prior authorization (PA) request for Child/Adolescent Day treatment (CADT) during the period of July 22, 2015 to October 2, 2015, by the provider, [REDACTED], because the provider failed to establish with timely, complete and reliable documentation that CADT services were appropriate, cost effective and medically necessary for the petitioner.

CONCLUSIONS OF LAW

The Department correctly denied the petitioner's July 17, 2015 prior authorization (PA) request for Child/Adolescent Day treatment (CADT) during the period of July 22, 2015 to October 2, 2015, by the provider, [REDACTED], because the provider failed to establish with timely, complete and reliable documentation that CADT services were appropriate, cost effective and medically necessary for the petitioner.

THEREFORE, it is

ORDERED

The petition for review herein be and the same is hereby 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 9th day of December, 2015

\sGary M. Wolkstein
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 December 9, 2015.

Division of Health Care Access and Accountability