



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

In the Matter of

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

DECISION

MPA/168874

PRELIMINARY RECITALS

Pursuant to a petition filed September 16, 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 13, 2015, at Waukesha, Wisconsin.

The issue for determination is whether the agency properly denied the Petitioner’s request for physical therapy (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: Kristen Derenne
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 Waukesha County. He is 5 years old and resides with his family.
2. Petitioner’s primary diagnoses include congenital quadriplegia and cerebral palsy.

3. On July 10, 2015, the Petitioner's provider, [REDACTED], submitted a Prior Authorization (PA) request to the agency for PT services 1x/week for 26 weeks. Petitioner has received PT services since January, 2013.
4. The Petitioner's provider developed a Treatment Plan on or about July 7, 2015 with the following goals:

Long Term Goal:

- Ambulate functional distances independently.

Short Term Goals:

- Kick a ball forward one time from independent standing and maintain balance for 2 seconds following the kick
- Rise to standing in the middle of the room through plantigrade with minimal support
- Ambulate forward for at least 25 feet with one quad cane without LOB
- Partially squat and return to standing 2 consecutive times without LOB

The plan notes that the Petitioner met the following two previously established goals:

- Walk independently in his home, taking at least 10 independent steps consistently with verbal cues
- Demonstrate the ability to take up to 6 steps independently and stop on command

The plan notes that the provider is recommending an increase in PT to 1x/week so Petitioner can improve his overall balance and progress to independent ambulation consistently around his home or with a quad cane only. It further notes that he was not receiving other PT services at the time due to school being out for the summer.

5. The Petitioner attends school in the [REDACTED]. His IEP for the period of May, 2015 – May, 2016 notes that the Petitioner receives 60 minutes/week of PT services. It notes that he uses a walker throughout the building and that he receives assistance in physical transitions such as stepping up on step stools, stair climbing, getting on/off motor equipment. Goals include the following:
 1. Demonstrate an increase in balance, manipulative skills and muscular strength/endurance by completing all of the following:
 - Catch a large koosh ball while in a tall-kneel when tossed from 8' away, 50% of the time
 - Perform 15 bent knee curl-ups with minimal assistance at the hands, 75% of the time
 - Perform 12 straight body pushups without stopping, 75% of the time
 - Strike a large wiffle ball with a plastic bat using a two hand grip with emerging trunk rotation, 50% of the time
 - Block a yarn ball from going in a basket with appropriate hand when tossed from 8' away while on the mat, 75% of the time while maintaining balance in tall-kneel.
 2. Given physical and/or visual or verbal prompting, Petitioner will increase his functional motor skills to allow for increase independent and participation in the classroom as evidenced by the following skills:

- Transition using reverse walker keeping pace with peers and use a heel toe walking pattern
- Demonstrate functional and age-appropriate fine motor skills, including bimanual coordination for use of classroom materials and for completion of self-cares, 80% of daily opportunities
- With proper seating feet on floor, he will attain and maintain an upright, attentive sitting posture with no round of his back during seat work for 5 minutes out of a 10 minute time frame.
- During group time on the floor, independently seat himself in ring or cross leg sitting on a wedge cushion.

The IEP notes that the Petitioner is able to use his walker throughout the school environment and can walk shorter distances with just one hand held. In the classroom, he takes 10 steps on his own with stand-by assist, can stand for up to a minute without support and is able to use furniture to move around the classroom, taking 1 – 3 steps between stable objects. Progressive casting was used to help secondary to tight hamstrings and limited back extension so he uses a cube chair or cushion on the floor without help during carpet time. He is able to transition from walker or floor to child-sized seating without help. He is able to catch a koosh ball with two hands. He has difficulty controlling his manipulative skills with too much force. He is able to perform 10 bent-knee situps with minor assistance.

6. On August 21, 2015, the agency denied the Petitioner’s PA request.
7. On September 16, 2015, an appeal was filed on behalf of the Petitioner 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. If the person receives therapy in school or from another private therapist, there must be documentation of why the additional therapy is needed and coordination between the therapists. Prior Authorization Guidelines, Physical, Occupational, and Speech Therapy, Topics 2781 and 2784.

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:
 - ...
 6. Is not duplicative with respect to other services being provided to the recipient; ...
 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 has interpreted the code provisions to mean that at some point the therapy program should be carried over to the home, without the need for professional intervention.

The petitioner has the burden of proving by the preponderance of the credible evidence that the requested therapy is necessary, which means that he must show that the service is cost-effective and that there are not less expensive services available that can meet his needs.

With regard to duplication of services in school settings, DHS Deputy Secretary Susan Reinardy held in DHA Final Decision No. MPA-37/80183, a speech therapy appeal, that “the deciding factor in whether services are duplicative is not the [therapy] technique utilized by the therapists, but the goals and outcomes being addressed by the therapists.” Id. at 2. A requested service duplicates “an existing service if the intended outcome of the two services is substantially the same.” Id. at 3. Her decision specifically rejected additional therapy because the recipient “‘needs’ more intense services than the school provides.” The holding rests on the principle that “Medicaid may not pay for two services if both services have the same intended outcome or result with respect to the medical condition the services are intended to address.” Id. at 4. The deputy secretary has made it clear that the “intended outcome” test must be read broadly. In DHA Final Decision No MPA-49/82886, a decision reiterating the principle laid down in MPA-37/80183, she pointed out that the intended outcome was the same if both therapists were working to develop similar functional skills. The deputy secretary's decisions are binding on Administrative Law Judges, meaning that they must follow those decisions whether they agree with them or not.

In this case, the agency asserts that the requested services do not meet the definition of “medically necessary” contained in the MA statutes. The agency notes that the long term goal of the provider is to facilitate independent gait. At the time of the request, the Petitioner was able to perform functional ambulation with a reverse walker in his home, outside and at school. He is noted to be able to take 10 independent steps, move around the classroom between stable objects, stand for a minute without support and move from floor to chair in the classroom. The agency argues that while the Petitioner has balance impairments which impact his ability to ambulate independently, the provider has not documented why PT is needed on a weekly basis to work on balance and why a home program in addition to school services is not sufficient.

The provider indicates that the Petitioner has demonstrated a fear of independent gait and will not consistently take steps on his own. The provider also argued that the school environment is too unsafe and unpredictable for the Petitioner to ambulate without his walker. The documentation from the school is contrary to the provider’s assertions, with the IEP noting that the Petitioner is demonstrating independent steps.

At the hearing, the Petitioner’s mother testified that the Petitioner can move somewhat independently but uses furniture for support. She indicated that his balance is off and his gait is not steady. She reported that she is doing exercises with him at home and is working on sitting in a cross-legged position. She asserts that the Petitioner needs PT in addition to what he receives at school to meet his goals for ambulation.

Based on the evidence provided, I concur with the agency’s determination that the PT services requested do not meet the definition of “medically necessary.” Part of the reason the services were requested was the summer school recess when Petitioner would not be receiving school services. That reason no longer exists as the Petitioner is now in school and receiving PT services under his IEP. I find that the requested services are duplicative of the school services as the goals of the IEP and of the requested services are substantially the same – to improve Petitioner’s balance, manipulative skills and overall muscular strength and endurance. In addition, I concur with the agency that the Petitioner’s provider has not demonstrated that the skills of a PT are needed on a weekly basis and that the requested services are the most cost-

effective and most appropriate level of services that can be provided. The Petitioner's mother noted that she is working on a home exercise program from the school that are meant to accomplish the same types of goals. As noted in the previous DHA decision quoted above, services cannot be approved because a member "needs" more intensive services than what the school and a home program can provide if the intended outcomes are the same.

Based on the evidence, I conclude the agency properly denied the Petitioner's request for PT services.

CONCLUSIONS OF LAW

The agency properly denied 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 8th day of December, 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 December 8, 2015.

Division of Health Care Access and Accountability