



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/168934

PRELIMINARY RECITALS

Pursuant to a petition filed September 22, 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 [“DHCAA”] in regard to Medical Assistance [“MA”], a Hearing was held via telephone on November 5, 2015. At petitioner’s request a Hearing scheduled for October 13, 2015 was rescheduled.

The issue for determination is whether DHCAA was correct to deny Prior Authorization [“PA”] for MA payment for Physical Therapy [“PT”] for petitioner.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED] (not present at November 5, 2015 Hearing)
c/o [REDACTED]
[REDACTED]
[REDACTED]

Represented by:

[REDACTED], petitioner’s mother
[REDACTED]
[REDACTED]

Respondent:

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

BY: [REDACTED], DPT, Therapies Consultant (Ms. [REDACTED] did not appear at the November 5, 2015 Hearing but submitted a letter dated October 5, 2015).
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (7 years old) is a resident of Jefferson County, Wisconsin.
2. Petitioner has diagnoses of spastic quadriplegic Cerebral Palsy ["CP"] and abnormality of gait. Exhibit #1.
3. On June 18, 2015 petitioner's provider, [REDACTED], Inc. of Watertown, Wisconsin, requested PA (PA # [REDACTED] dated June 18, 2015) for MA coverage of PT for petitioner at the rate of 1 session per week for 15 weeks for 45 minutes each session with a requested start date of June 9, 2015 at a total cost of \$2,571.30. Exhibit #1.
4. DHCAA denied PA # [REDACTED]; DCHAA sent a letter to petitioner dated August 14, 2015 and entitled *BadgerCare Plus Notice of Appeal Rights* informing her of the denial.
5. Petitioner receives Botox injections every 3 months as part of her tone management treatment plan. Exhibit #2.
6. According to a letter dated September 21, 2015 from petitioner's mother (who is a Registered Nurse ["RN"]) the requested PT "is necessary due to her diagnosis and after botox injections in order to regain strength in her muscles." At the Hearing in this matter petitioner's mother testified that petitioner needs the requested PT to regain strength because Botox weakens the muscles. Exhibit #2.
7. In a document entitled *PA Additional Request for [petitioner]* with a fax dated of July 10, 2015 petitioner's private PT states that the requested PT is "initiated to continue to progress strengthening within newly gained range of motion to achieve maximum benefit of Botox injections."
8. In a letter dated September 4, 2015 petitioner's rehabilitation doctor states: "Post-Botox outpatient physical therapy and serial casting have been recommended in order to maximize the benefits and effects of the Botox and to make the response more durable overall." Exhibit #2.
9. Petitioner's family is independent with a home stretching program and standing exercise program for petitioner.
10. The goals of the requested OT as stated in petitioner's June 10, 2015 *Physical Therapy Evaluation* include standing independently in a static position for 30 seconds, transfer from prone to quadruped position with minimal assistance, maintain quadruped position statically for 30 seconds, maintain ½ kneeling position for 15 seconds with upper extremity support on exercise ball, and "patient/family will participate in progressive home exercise program and home stretching program."

DISCUSSION

By law, MA pays only for medically necessary and appropriate health care services when provided to currently eligible MA recipients. Wis. Admin. Code §§ DHS 107.01(1) & 107.16(1)(a) (August 2015); See also, Wis. Stat. §§ 49.46(2) & 49.47(6)(a) (2013-14). In order for a service to be *medically necessary* it must meet several specific requirements. See, Wis. Admin. Code § DHS 101.03(96m) (December 2008). As with any eligibility denial, the burden is on petitioner to show that he is eligible for the requested services. *Lavine v. Milne*, 424 U.S. 577, 583-584 (1976). Petitioner has failed to do so.

One of the requirements for *medical necessity* is that the service must be the most appropriate supply or level of service that can safely and effectively be provided to the recipient. Wis. Admin. Code § DHS 101.03(96m)(b)9. (December 2008). Another is that the requested service must be cost-effective compared to an alternative medically necessary service which is reasonable accessible to the recipient. . Wis. Admin. Code § DHS 101.03(96m)(b)8. (December 2008). In this case petitioner has failed to show that the requested PT is most appropriate supply or level of service and has also failed to show that the requested PT cost-effective compared alternative services. This is for 2 reasons. First, based on the evidence in the record of this matter, the goals of the PT are not certain -- the goal as stated by petitioner's mother, doctor, and PT (regain strength after Botox) are not the same as the goals contained in petitioner's June 10, 2015 *Physical Therapy Evaluation*. Without certainty as to the goal appropriateness and cost-effectiveness cannot be determined. Second, if the goal is to regain strength after Botox then the evidence in the record of this matter is that petitioner's family can address that goal and that a PT is not necessary. Petitioner's family is independent with a home stretching program and standing exercise program for petitioner. Indeed, one of the goals in petitioner's June 10, 2015 *Physical Therapy Evaluation* is that "patient/family will participate in progressive home exercise program and home stretching program."

CONCLUSIONS OF LAW

For the reasons discussed above, DHCAA was correct to deny PA for MA payment for PT for petitioner.

NOW, THEREFORE, it is

ORDERED

That 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 4th day of December, 2015

\sSean P. Maloney
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 4, 2015.

Division of Health Care Access and Accountability