



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
c/o [Redacted] And [Redacted]
[Redacted]
[Redacted]

DECISION

MPA/170997

PRELIMINARY RECITALS

Pursuant to a petition filed December 23, 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 January 15, 2016, at Balsam Lake, Wisconsin.

The issue for determination is whether the petitioner is entitled to medical assistance reimbursement for speech therapy.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
c/o [Redacted] And [Redacted]
[Redacted]
[Redacted]

Respondent:

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

By: [Redacted]
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Polk County.

2. On October 30, 2015, the petitioner with ██████████ requested 26 45-minute sessions of speech therapy at a cost of \$3,380. After requesting and receiving more information from ██████████ the Office of Inspector General denied the request on December 7, 2015.
3. The petitioner is an 11-year-old boy diagnosed with Down Syndrome whose speech is mostly unintelligible.
4. The petitioner speaks fewer than 25 intelligible words. He has two sounds, “m” and “b”, that he produces correctly in the initial, medial, and final positions of words. He has four other sounds, “p”, “n”, “w”, and “t”, that he produces in the initial position of words.
5. ██████████ set the following primary for the petitioner:
 - a. increase his speech intelligibility to an age appropriate level
 - b. increase his receptive language skills to an age appropriate level
 - c. increase his expressive communication skills to a more age appropriate level
6. The petitioner receives special education services, including speech and language services, through his school district. His school district seeks to improve his expressive and receptive communication but has focused on using an iPad to help him communicate because he has been unable to develop verbal skills.
7. ██████████ has not coordinated its services with those provided by the school district.
8. ██████████ did not objectively measure the petitioner’s verbal ability when it first provided services to him.

DISCUSSION

The petitioner is an 11-year-old boy diagnosed with Down Syndrome who seeks speech therapy to develop his limited speaking skills. Medical assistance covers speech therapy, but recipients must obtain prior authorization after the first 35 visits. Wis. Admin. Code § DHS 107.18(2)(b). When determining whether a service is necessary, the Division must review, among other things, the medical necessity, appropriateness, and cost of the service; the extent to which less expensive alternative services are available; and whether the service is an effective and appropriate use of available services. Wis. Admin. Code, § DHS 107.02(3)(e)1.,2.,3.,6. and 7. “Medically necessary” means a medical assistance service under ch. DHS 107 that is “[r]equired to prevent, identify or treat a recipient's illness, injury or disability;” and meets these 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.

Wis. Admin. Code, § DHS 101.03(96m)

The petitioner seeks six months of weekly speech and language sessions from [REDACTED]. The Office of Inspector General denied that request because it contends that the services duplicate those he receives from his school district, that [REDACTED] did not coordinate its services with those of the school district, and that the petitioner has not shown that the proposed therapy will allow him to speak so others can understand him.

Both the school district and [REDACTED] seek to improve the petitioner's expressive and receptive language skills. The school district's actual goals are not clearly specified; [REDACTED]'s goals are to increase his speech intelligibility to an age-appropriate level, increase his receptive language skills to an age-appropriate level, and increase his expressive communication skills to a more age-appropriate level. The petitioner's mother testified that the school district is concentrating more and using an iPad as a communication device while [REDACTED] is still trying to improve his articulation. Her contention that the school is focusing on assistive communication devices is supported by information in the petitioner's individualized education program. No one from [REDACTED] testified, and it is unclear from its prior authorization request how much therapy is provided to each area. This means that although it appears that the two providers have a somewhat different focus, it is impossible to determine how much the services overlap.

This problem could have been resolved if the school's therapist [REDACTED] had coordinated its services with each other. [REDACTED] indicated that it intended to do this, but there is no evidence that it ever did. Speech and language providers "are required to communicate with other providers as frequently as necessary to do the following:

- Avoid duplication of services.
- Ensure service coordination.
- Facilitate continuity of care."

Those with whom the private provider must communicate include school-based providers. In addition, "[p]roviders are required to document their communication with other providers in the member's medical record." *ForwardHealth Therapies Handbook, Topic #2781.* <https://www.forwardhealth.wi.gov/WIPortal/Online%20Handbooks/Display/tabid/152/Default.aspx?ia=1&p=1&sa=87&s=1&c=4&nt=Requirements&adv=Y>. Related to this, medical assistance policy also requires private providers to "communicate" with school-based providers at least once a year. *ForwardHealth Therapies Handbook, Topic #2784.* <https://www.forwardhealth.wi.gov/WIPortal/Online%20Handbooks/Display/tabid/152/Default.aspx?ia=1&p=1&sa=87&s=1&c=4&nt=Requirements&adv=Y>.

The petitioner's medical record does not document any communication between the school's provider and [REDACTED], and there is no evidence that any such communication occurred. This alone is enough to deny the requested services.

In addition, there is insufficient evidence that the requested therapy will improve the petitioner's articulation enough for his speech to be understood. He is 11 years old and he speaks fewer than 25 intelligible words. He produces two sounds correctly in the initial, medial, and final positions of words, "m" and "b", and he produces four other sounds correctly in the initial position of words, "p", "n", "w", and "t". He can follow one-step directions only 40% of the time. When given multiple-step directions, he will usually pick the last object mentioned rather than the one he is supposed to pick. For example, if told to choose the ball under the dog, he will choose the dog. When he is asked a question with two

possible solutions, he will answer correctly half of the time, the same accuracy one would expect of someone who did not know what the actual question was.

This does not mean that he cannot improve or that because of his limitations, speech therapy can never be justified. But he and [REDACTED] have the burden of proving by the preponderance of the credible evidence that his speech will improve enough to allow him to speak well enough for others to understand him. That said, I disagree with the agency's argument that standardized testing showing him at the level of a two or three-year-old child demonstrates that it is futile to try to get him speak above this level. I do not know exactly what this test evaluates, but I assume it is his current speaking ability. It strikes me that using a test like this to establish a limit on what he can do is similar to telling someone who was tested and ran a 12-minute mile that more running will not allow him to run a 10-minute mile because the test established his maximum current ability. The purpose of therapy, similar to the purpose of training, is to allow someone to improve upon his current ability.

Still, because [REDACTED] and the petitioner have the burden of proof in this matter, they must present evidence that establishes that he can meet reasonable goals. [REDACTED]'s prior authorization request contains the results of no objective testing of what his ability was when therapy began. Nor does it contain any objective testing of his progress. Instead there was only vague, anecdotal testimony that he was doing better. I do not doubt the sincerity of the petitioner's mother, but to be approved this request requires scientifically sound evidence. The petitioner is not one or two years old, but 11. When someone that age has barely any understandable vocabulary, he and his provider must present some credible evidence that the requested therapy will change this. It is not enough to argue that [REDACTED] has techniques that the school doesn't. I'm sure it does, and I'm sure its therapists are qualified. But it needs to show that the preponderance of the credible evidence establishes that those techniques will allow the petitioner to develop some basic level of functional speaking ability. Because it hasn't, I must uphold the agency's decision.

CONCLUSIONS OF LAW

The Office of Inspector General properly denied the requested therapy because the petitioner has not proved the preponderance of the credible evidence that the therapy is medically necessary.

THEREFORE, it is

ORDERED

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 Madison,
Wisconsin, this 4th day of March, 2016

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 4, 2016.

Division of Health Care Access and Accountability