



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION

MPA/172466

PRELIMINARY RECITALS

Pursuant to a petition filed March 2, 2016, under Wis. Stat., §49.45(5), to review a decision by the Office of the Inspector General (OIG) to deny Medical Assistance (MA) authorization for occupational therapy (OT), a hearing was held on April 6, 2016, at Wisconsin Rapids, Wisconsin, with the parties appearing by telephone.

The issue for determination is whether the OIG correctly denied OT for lack of medical necessity.

PARTIES IN INTEREST:

Petitioner:

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

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Written submission of [Redacted] OT Consultant

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 5-year-old resident of Wood County.
2. Petitioner’s diagnosis is listed as “unspecified disorder of psychological development” and alternatively as “sensory processing disorder.” See PA request, cover page, and [Redacted] OT Re-Evaluation. The agency approved two six-month, twice weekly OT authorizations in 2015, running through February 17, 2016.

3. On January 11, 2016, ██████████ LLC requested authorization for a third six-month, twice weekly OT program, to start February 18, 2016, PA no. ██████████. By a letter dated February 8, 2016, the OIG denied the request.
4. ██████████ later filed another PA request for once weekly OT but the OIG took no action on it because of the pending appeal, noting that it “offers essentially no new or different documentation.” OIG case summary, page 2.
5. In April, 2016 petitioner’s school district found that petitioner did not qualify for an Individualized Education Program (IEP) because he did not have a disability.
6. In his January, 2016 OT re-evaluation petitioner scored within average motor skills ranges. His deficits appear to be of a sensory nature of type that is not easily put in objective terms. Nevertheless his sensory deficits do not appear to be improved in the past year. OIG case summary, pp. 4-5.

DISCUSSION

OT is covered by MA under Wis. Admin. Code, §DHS 107.17. Generally OT is covered without need for prior authorization for 35 treatment days, per spell of illness. Wis. Admin. Code, §DHS 107.17(2)(b). After that, prior authorization for additional treatment is necessary. If prior authorization 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 OIG 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:
 1. Is consistent with the recipient’s symptoms or with prevention, diagnosis or treatment of the recipient’s illness, injury or disability; ...
 3. Is appropriate with regard to generally accepted standards of medical practice; ...
 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 OIG denied the request primarily because the evaluation did not show the medical need for the services. The consultant noted that although the evaluation showed problems to be worked on, it did not identify why petitioner was unable to accomplish the tasks.

After careful consideration I conclude that the OIG correctly denied the request. Although I am puzzled why the Department granted a year’s worth of OT if the evaluations lacked objective measurements, nevertheless the lack of objective deficits for petitioner is evident. I recently ruled on a request for speech therapy for petitioner, case no. MPA-170581. The following discussion in that case is important in this case:

The Department's Prior Authorization Guidelines, Physical, Occupational, and Speech Therapy, Topic 2731 describes medical necessity. Typically the DHCAA requires objective testing results in determining whether the requested service is necessary, and common reasons for finding a lack of medical necessity include:

- Baseline performance is not documented in terms of the member's current functional abilities and limitations.
- Clinical information is not provided in sufficient detail to suggest that both of the following are true:
 - Treatment goals are reasonable given the current age and health status of the member.
 - Attainment of treatment goals would result in predictable functional improvement to the member.

The Department stresses the need for objective testing in determining the need for services. In this case petitioner's objective testing showed him to be functioning within normal limits.

The result is that it is difficult to show improvement after the course of OT.

A further problem is that reports of petitioner's functioning are contradictory. His school reports that he uses appropriate utensils to eat, but private OT says he does not use utensils. The provider must justify the need for the services. In this case there are so many questions about the need for the service that the denial by the OIG is justified.

CONCLUSIONS OF LAW

The OIG correctly determined that that the requested OT has not been shown to be medically necessary.

THEREFORE, it is **ORDERED**

That the petition for review 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 12th day of April, 2016

\sBrian C. Schneider
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 April 12, 2016.

Division of Health Care Access and Accountability