



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

In the Matter of

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

DECISION

MPA/172691

PRELIMINARY RECITALS

Pursuant to a petition filed March 08, 2016, 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 (MA), a telephone hearing was held on April 21, 2016.

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

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: [REDACTED], MA, CCC-SLP (written appearance only)
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Brown County.

2. On February 5, 2016, the petitioner with Cerebral Palsy, Inc., requested speech therapy one time per week for 26 weeks at a cost of \$5,593.80, commencing November 18, 2015. The respondent denied the request on February 26, 2016. Exhibit 2.
3. The petitioner is a three-year-old boy diagnosed with autism and mixed receptive and expressive language disorder. See, Exhibit 3.
4. The petitioner attends Green Bay Area public schools, and receives speech and language therapy special education in 15-minute sessions three times weekly. Exhibit 3.
5. The Petitioner receives 30 hours weekly of in-home intensive autism treatment provided through the Fox Valley Autism Treatment Program. Exhibit 3.
6. Petitioner's goals with Fox Valley Autism Treatment Program include:
 - a. Verbalize wants and needs with words or signs 2/10 times with prompts
 - b. Express rejection/refusal without behaviors 3/10 times with prompts
 - c. Follow simple one-step directions from staff that are not routine 8/10 times with prompts with minimal behaviors
 - d. Identify receptively 10 colors, a-l letters, 8 shapes, numbers 1-15, 20 body parts
 - e. Label (tact) 50 objects non-verbally
 - f. Request 50 objects non-verbally
 - g. Reciprocate greetings with a verbal response or gesture 8/10 times independently
 - h. Communicate when he needs to use the bathroom 8/10 times.
7. Petitioner's goals with Cerebral Palsy, Inc. include:
 - a. Recognize familiar objects, body parts, clothing, to 80% accuracy
 - b. Respond to verbal yes/no questions with 80% accuracy
 - c. Follow one-step direction with 80% accuracy
 - d. Repeat modeled speech of increasing length with 80% accuracy
 - e. Use verbalization, gesture, eye gaze to indicate wants or make a selection with 80% accuracy
 - f. Demonstrate vocabulary of 20 words/approximations and/or signs.

DISCUSSION

The petitioner is a three-year-old boy diagnosed with autism who is non-verbal. His provider, Cerebral Palsy, Inc., seeks to treat him weekly for 26 weeks to address his verbal deficits. He also receives therapy through his school district and from an in-home autism program. The primary question is whether the requested services duplicate those he already receives.

Medical assistance covers speech therapy if the recipient obtains prior authorization after the first 35 visits. Wis. Admin. Code § DHS 107.16(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. To be medically necessary, a service must be “[r]equired to prevent, identify or treat a recipient's illness, injury or disability” and not be “duplicative with respect to other services being provided to the recipient.” Wis. Admin. Code § DHS 101.03(96m)(a) and (b)6.

When determining whether the requested therapy duplicates therapy a person already receives, the Division of Hearings and appeals has generally looked at whether the goals and intended outcomes of the two providers are similar. It does not matter if the therapists use different techniques or if one uses individual and the other group therapy. There are limits to this type of analysis. There has to be some reasonable expectation that the original therapist can accomplish what that therapist is trying to accomplish. If the child's needs are great, and the school's therapy is insufficient to meet those needs, more intensive outside therapy may be necessary. Nor would one expect a discredited technique to accomplish the stated goals. But the petitioner and his provider have the burden of proving that any requested therapy is necessary. If, as is true here, the initial issue that must be resolved before any other issues are addressed is whether the requested therapy duplicates therapy the petitioner already receives, he and his provider must establish by the preponderance of the credible evidence that duplication does not occur.

The school's goals appear to concentrate on social skills, as well as sound imitation and direction following. See, Exhibit 3. The in-home autism program concentrates more specifically on the petitioner's verbal skills, though it does also address direction following, among other goals. Cerebral Palsy, Inc. proposes goals that include direction following and verbal skills. The petitioner's representative contends that the school's services are inadequate and are not speech therapy; she asserts that the school therapy is behavioral. She argues that early intervention is key here, since petitioner is so far behind his peers.

While I found the petitioner's representative credible, it does not address the actual duplication that is in the offing here. The goals of school therapy, intensive autism treatment, and Cerebral Palsy, Inc. are remarkably similar. There is nothing in the record to establish that the Cerebral Palsy, Inc. treatment and goals would not be addressed by petitioner's in-home treatment. And while petitioner's representative described the school therapy as behavioral, I note that the school therapy goals include answering yes/no questions, imitating sounds, and following one-step directions; these goals are also included with Cerebral Palsy, Inc.'s speech therapy plan.

For these reasons, I find that the petitioner has not established by the preponderance of the credible evidence that the requested therapy is medically necessary. Therefore, the Office of Inspector General's denial of that therapy is upheld.

CONCLUSIONS OF LAW

The requested speech therapy is not medically necessary because it duplicates therapy the petitioner already receives.

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 31st day of May, 2016

\sPeter McCombs
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 May 31, 2016.

Division of Health Care Access and Accountability