



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

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

DECISION

MPA/173081

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 23, 2016, under Wis. Stat., §49.45(5), to review a decision by the Division of Health Care Access and Accountability (DHCAA) to deny Medical Assistance (MA) authorization for speech therapy (ST), a hearing was held on May 4, 2016, by telephone.

The issue for determination is whether the provider justified the medical need for the requested services.

**PARTIES IN INTEREST:**

Petitioner:

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

Respondent:

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

By: Written submission of [REDACTED], ST Consultant

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is an 8-year-old resident of Milwaukee County who receives MA.
2. Petitioner's diagnosis is listed by her provider as Symbolic Language Disorder. She received services at New Berlin Therapies. Her school lists her diagnosis as Emotional Behavioral Disability.
3. During the 2014-15 school year petitioner's special education team declined to offer ST as part of petitioner's Individualized Education Program (IEP), noting that petitioner does not have deficits in receptive language in the classroom setting. See 10/20/14 IEP document attached as Exhibit 1 to the Office of the Inspector General (OIG) case summary dated April 19, 2016.

4. In the spring, 2015, the DHCAA approved twelve ST sessions for petitioner for the summer months. Then in approximately September, 2015 the DHCAA approved an additional twelve sessions with the instruction “Allowed to transition goals to school. Coordination of services with school for carryover is necessary.” It noted that any further prior authorization requests should document how goals are being carried over to the school setting as a result of communication with school representatives.
5. On November 10, 2015, New Berlin Therapies requested authorization for 26 ST sessions, PA no. [REDACTED]. The request noted no coordination with petitioner’s school, stating only that petitioner does not receive ST in school and therefore coordination is unnecessary. The goals listed on the request were almost exactly the same as the goals on the original PA request from April, 2015, with the current status vaguely stated as “less than 50%.” See 10/15/15 progress note submitted with the PA request; the note was the only one submitted by the provider with the request.
6. The DHCAA denied the request by a letter dated December 23, 2015.

### DISCUSSION

As a first note the OIG asked that the appeal be dismissed as untimely. However, the notice of denial was sent to the wrong address. The error was due to the provider putting the wrong address on the PA request. It is evident that the appeal was filed immediately after petitioner’s parents were informed about the denial, and thus I will not dismiss the appeal as untimely.

Speech and language therapy is an MA-covered service, subject to prior authorization after the first 35 treatment days. Wis. Admin. Code, §DHS 107.18(2). 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:
  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 DHCAA interprets the code provisions to mean that a person must continue to improve for therapy to continue, specifically to increase the ability to do activities of daily living. In addition, at some point the therapy program should be carried over to the home, without the need for professional intervention.

In addition, when speech therapy is requested for a school age child in addition to therapy provided by the school system, the request must substantiate the medical necessity of the additional therapy as well as the procedure for coordination of the therapies. Prior Authorization Guidelines, Physical, Occupational, and

Speech Therapy, Topics 2781 and 2784. It is up to the provider to justify the provision of the service. §DHS 107.02(3)(d)6.

The DHCAA denied the request because the provider did not provide objective evidence that the services were improving petitioner's functioning and because the provider did not follow agency instructions to coordinate with school professionals. Petitioner's situation is unique to me because in my many years as an ALJ I have never seen a PA request in which child's school determines that there is no need whatsoever for therapy, while the child's private therapist insists that therapy is necessary. It is evident to me that the DHCAA demanded coordination with the school because the private therapist was working on language usage and comprehension, which a school would be working on as a matter of course. Thus this situation does not follow the usual pattern in which private therapy is requested because the school is unable to provide sufficient therapy or where the parents choose to utilize private therapy instead of school; here the school says that petitioner does not even have speech deficits.

In addition, the record provided by to the DHCAA by New Berlin is devoid of any evidence of improvement. The DHCAA cannot guess whether there is improvement; the provider needs to document improvement with defined, objective evidence.

I conclude that the DHCAA correctly denied the request, with the lack of objective evidence of improvement being the primary reason. From the provider's own record submitted to the DHCAA it is difficult to determine that the therapy is making a difference. Petitioner's mother pointed to therapy notes dated August 14 and December 3, 2015 that show improvement in two of five areas. See petitioner's Exhibit 2. Those notes were not included in the PA request, so the DHCAA had no knowledge of them when reviewing the PA request. Furthermore they only add more questions because in at least two of the areas petitioner appeared to decline, not improve.

I acknowledge that my decision is made easier with the knowledge, as mentioned by petitioner's mother, that the therapist who worked with petitioner at New Berlin moved to a different employer in the meantime. This PA request could not follow her, and I would be hesitant to grant authorization to a new therapist at New Berlin who has no or little knowledge of petitioner. The better course would be for petitioner's longtime therapist to file a PA request from her new employer, or for a replacement therapist at New Berlin to do her own evaluation with a new PA request.

### CONCLUSIONS OF LAW

The DHCAA correctly denied a request for ST services because the provider failed to quantify that petitioner's language functioning was improving.

**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 May, 2016

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\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 May 12, 2016.

Division of Health Care Access and Accountability