



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION
Case #: MPA - 174245

PRELIMINARY RECITALS

Pursuant to a petition filed on May 9, 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 regarding Medical Assistance (MA), a hearing was held on June 16, 2016, by telephone.

The issue for determination is whether the Division correctly denied a prior authorization request for speech and language therapy (SLT) for the petitioner.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Respondent:

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

By: [REDACTED], MA, CCC-SLP
Division of Health Care Access and Accountability
PO Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 13-year-old resident of Wood County who receives MA.

2. Petitioner has spastic quadriplegic cerebral palsy. He has also been diagnosed with asthma, dysphagia, oropharyngeal phase, dysarthria, and anarthria. Petitioner receives speech and language therapy (SLT) pursuant to an Individual Education Program (IEP) with the [REDACTED] School District. Petitioner has also participated in SLT at Therapies Plus, LLC, for approximately 10 years. Between 2005 and 2016, the respondent has authorized 670 SLT visits to address petitioner's swallowing and feeding concerns. Exhibit 4.
3. On or about March 10, 2016, Therapies Plus requested a new prior authorization for an evaluation and twice monthly oral function therapy sessions beginning May 2, 2016, and continuing for 26 weeks, PA no. [REDACTED]. By a letter dated April 11, 2016, the DHCAA denied the request. Exhibit 3.

DISCUSSION

The petitioner is a 13-year-old boy diagnosed with spastic quadriplegic cerebral palsy who seeks speech therapy to develop his oral motor feeding functionality. 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. DHS 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 26 weeks of bi-monthly speech and language sessions. The Office of Inspector General denied that request because it contends that the requested therapy is not medically necessary. Specifically, the respondent contends that the PA documentation does not support the necessity of a skilled speech and language pathologist. The respondent, in her written statement, concluded:

[Petitioner] has received ongoing therapy since 2005 to address deficits related to feeding. He currently consumes all nutrition orally and is able to eat a variety of foods and food textures. He requires monitoring and prompts for safety of oral eating. The

skills of a therapist are not determined necessary to add additional food items to his current diet. Tongue lateralization is reported by the provider to be hindering [petitioner] from ability to eat additional raw fruits and vegetables. Tongue lateralization has been a focus of therapy services since at least 2013. The OIG notes that with cues and monitoring [petitioner] is able to eat a varied diet and questions based on diagnosis whether tongue lateralization is a realistic goal given limited progress in this area to date.

Exhibit 4.

The petitioner's mother testified that petitioner has made slow but steady progress as a result of his commitment to the therapy provided over the last several years. His providers have noted that the family has done an excellent job of following up on the skills learned in therapy. The appeal record includes the following written statement from petitioner's parents:

From our perspective as parents the need for the services of a skilled therapist are both to work effectively with ██████ in a therapeutic setting and to assist us in setting up and following a home program. We are well able to follow a plan for practicing certain skills, but when ██████ progresses and his needs change or when what we are doing is not resulting in success, we rely on the therapist to guide us to change the program.

Exhibit 2. This excerpt describes the difficult determination by the respondent. The PA documentation identifies petitioner as progressing, and able to meet his nutritional needs orally at present. There is lacking here an identifiable progression or "needs" change that would prompt the need for skilled therapy at this time. This does not mean that he cannot improve or that because of his limitations, speech therapy can never be justified. But he and his provider have the burden of proving by the preponderance of the credible evidence that his needs justify the requested services of a skilled SLT therapist. Medical Assistance is intended to provide the basically necessary services to the greatest number of people possible. While I do not doubt that the SLT services would be beneficial to petitioner, I cannot conclude that they are medically necessary based on the documentation provided.

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 request SLT 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, **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 5th day of August, 2016

\s _____
Peter McCombs
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 August 5, 2016.

Division of Health Care Access and Accountability