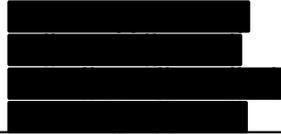




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MPA/174379

PRELIMINARY RECITALS

Pursuant to a petition filed May 16, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Wisconsin Department of Health Services, by the Office of Inspector General, in regards to Medical Assistance (MA), a hearing was held on June 15, 2016, at Viroqua, Wisconsin.

The issue for determination is whether the Department of Health Services, by the Office of Inspector General, correctly denied the petitioner's prior authorization request for speech & language therapy services during the summer vacation months.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

Written Appearance By: [Redacted], CCC-SLP,
Speech & Language Therapy Consultant
Office of Inspector General/PA Unit
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:
Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a 4 ½ year old resident of Vernon County; she lives at home and is certified as eligible for MA.
2. The petitioner had bilateral cochlear implants placed just before becoming two years old. She has a phonological disorder, and expressive language disorder. She has chromosome 7q21.3 deletion, profound sensorineural hearing loss in the right ear and moderately severe to profound sensorineural loss in the left ear.
3. The petitioner receives a SLT regimen at school during the school year that consists of 2 twenty minute visits with a speech & language therapist per week. She also receives physical therapy, and teacher of the deaf and hard of hearing services from the [REDACTED] School District as part of her Individualized Education Plan (IEP). The IEP also has treatment goals to address the child's social, sign language and auditory skills. The IEP recommends that the child would benefit from participating in language rich activities including being read to and attending child-focused activities and outings to gain continued exposure and peer models for success with her language development.
4. The petitioner's articulation skills were found by her school to be significantly delayed in comparison to age peers, with errors noted to be sound substitutions and omissions. The school has IEP goals to address speech intelligibility.
5. In October/November, 2015, the school tested the petitioner's language skills. In receptive vocabulary she scored in the average range in comparison to age-peers. In expressive vocabulary, she scored in the low average range with respect to age-peers. Finally, the school found "[A] displays receptive and expressive vocabulary and language abilities that are considered to be within the average to low range for a child of her age."
6. The fee-for-service SLT provider tested the petitioner again in January 2016, using the same tests as the school had used, and arrived at a score of 83 (moderately low) compared to the school score of 92 (average). She did not test for expressive language at that time. She tested the child's Mean Length Utterance and found it moderately low. She concluded that the child has expressive language delays.
7. She had a standard score ("SS") in the school administered Goldman Fristoe Test of Articulation of 65 in late 2014; and 76 in October/November 2015. She had a SS score of 71 in the same test when administered by SLP Walters in January, 2016.
8. On April 21, 2016, Gunderson Health Systems of La Crosse, Wisconsin, the petitioner's proposed fee-for-service speech & language therapy provider, requested prior authorization for MA coverage of speech & language therapy (SLT) for 28 visits approximately occurring twice per week during the summer vacation months between school-based services SLT regimens during the last, and next, school year.
9. The Department, by its agents, denied the prior authorization request on May 4, 2016 because the requested service or equipment is not covered by the MA program under a Treatment Intervention Advisory Committee (TIAC) directive; and because the school year regimens have been appropriate, efficacious and sufficient in the SLT Consultant's opinion.
10. The petitioner does not receive school-based SLT services during the 2016 summer vacation months from the [REDACTED] School District.
11. On May 26, 2016, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the denial of the PA Request for SLT services.

DISCUSSION

The Department may only reimburse providers for medically necessary and appropriate health care services and equipment listed in Wis. Stat. §§ 49.46(2) and 49.47(6)(a), as implemented by Wis. Admin.

Code ch. HFS 107. Some services and equipment are covered if a prior authorization request is submitted and approved by the Department in advance of receiving the service. Finally, some services and equipment are never covered by the MA program.

Auditory Verbal Training , or, “(AVT) ...is a specialized type of therapy designed to teach a child to use the hearing provided by a hearing aid or cochlear implant for understanding speech and learning to talk.” See, Exhibit #1, Attachment 2, p. 3.

Wisconsin law permits the Department to define exclusions of coverage for experimental services via four mechanisms in Wis. Admin. Code § DHS 107.035(2). The fourth method delineated by the Code is when a service is determined not be a proven and effective treatment for the condition it is intended or used, in the judgement of a committee under contract with the Department to perform health care services review. Here, the Consultant states in her Summary that the Department’s Treatment Intervention Advisory Committee (TIAC) reviewed the efficacy of Auditory Verbal Therapy (AVT) and rated it as “4” on a scale of 1 to 5, with “1” being “Well Established or Strong Evidence” and “5” being “Untested/Experimental Treatment and/or Potentially Harmful”.

The TIAC determined and published its review directing that AVT is not a service covered by the Department. See, Exhibit #1 (OIG Summary), Attachment 1, p. 2 & Attachment 2.

To this, the petitioner’s speech and language therapist admitted that she did not submit or presently have any clinical studies or reports on the efficacy of AVT, though she did opine they must be out there in the clinical community. And she noted that the Gunderson Lutheran Medical Center was a very well-regarded provider entity that does not make requests for coverage unless the service sought is generally appropriate and effective. She opined that the requested AVT regimen would work for the petitioner, and help her improve her intelligibility.

Her testimony does not rebut the Department’s determination by designated committee that the AVT is not proven or effective to treat expressive language deficits or phonological disorders.

The requested speech & language therapy (SLT) in this case is not covered by the MA program per Wis. Admin. Code § HFS 107.035(2). I need not reach the sub-issue of whether it is medically necessary, or not. Coverage is excluded by the action of the Department and its TIAC health services review committee. The OIG was therefore unable to approve the requested service due to the determination that the Auditory Verbal Training is not a proven and effective treatment.

CONCLUSIONS OF LAW

The MA program does not provide payment as requested by the petitioner.

THEREFORE, it is

ORDERED

That the petition for review 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 15th day of June, 2016

\sKenneth D. Duren, Assistant Administrator
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 June 15, 2016.

Division of Health Care Access and Accountability