



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

In the Matter of

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

DECISION

Case #: MPA - 174856

PRELIMINARY RECITALS

Pursuant to a petition filed on June 6, 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). The hearing was held on July 21, 2016, by telephone. At the request of the petitioner, the record was held open for 15 days for the submission of additional information.

The issue for determination is whether the Department, by the Office of the Inspector General, correctly denied the petitioner’s request for prior authorization of 12 occupational therapy visits over 24 weeks, i.e., one visit every other week, as not medically necessary.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Represented by:

[REDACTED]
[REDACTED]

Respondent:

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

By: [REDACTED], OTR, Occupational Therapy Consultant
Division of Health Care Access and Accountability
PO Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a three year, 11 months, old resident of Dane County. He carries the diagnoses of “emotional lability” and “sensory disturbance”, blueberry allergy and asthma. He is noted to possess: a “limited diet” of preferred foods; “high sensory needs”; and “unsafe behaviors to self

and others”. He is reported to have “delayed gross motor skills”, not otherwise identified. No fine motor deficits are noted, and he has “a high level of endurance for physical activity”.

2. On or about March 22, 2016, the petitioner’s occupational therapy provider, UnityPoint Health – Meriter, of Madison, Wisconsin, filed a prior authorization request with the Wisconsin Department of Health Services, Office of Inspector General, requesting coverage of an occupational therapy evaluation and 12 occupational therapy visits over 24 weeks, to occur about every other week, plus carryover activities, at a total cost of \$5,852. The only diagnosis provided in the Request was “R4586 – EMOTIONAL LABILITY”. No spell of illness or first day of treatment were stated in the PA Request Form; and no information was provided about any other prior course of occupational therapy for this child. Rather, it is reported only that he received physical therapy and occupational therapy in a Birth-to-Three Program. The frequency and duration are not known in this record.
3. The proposed OT regimen states long term and short term goals of therapy as follows:

Long Term Goals (to be met in 6 months):

1. [REDACTED] will, with support of caregivers, be able to sustain a calm, well-organized state so that he can cooperate and actively participate in daily routines of self-help, social and play skills with caregivers and peers when at home or in the community. Baseline: [REDACTED] requires maximal adult support and physical assist during daily activities in order to participate.
2. [REDACTED] will, with support of caregivers, be able to maintain well organized state of arousal so he does not pose a risk to personal safety of himself and others within his natural Environments. Baseline: [REDACTED] requires direct supervision at all times to assure physical safety of self and peers.
3. [REDACTED] will accept nutritious foods from each food group daily for healthy development and growth. Baseline: [REDACTED] accepts a very limited range of food flavors, textures, temperatures which does not provide him with complete nutrition to support his development.

Short Term Goals (to be met in 12 weeks):

1. With guidance of caregivers, use a sensory based daily home activity program at consistent intervals of approximately every 2 hours, so that he is able to achieve a calm, organized state for at least 15 min at a time during ADLs and during supervised play.
2. With support of caregivers and home program, be able to play with other children for at least 10 min 2x daily without tantrums and physical aggression that places himself or others at risk of injury.
3. Will accept at least 2 bites of at least 1 combined texture food at each meal to progress his oral sensory tolerance and improve nutrition.

See, Exhibit #2, attached OT Evaluation of March 14, 2016, at pp. 3-4.

4. On April 25, 2016, the DHS, by the Office of Inspector General, issued a letter to the petitioner informing him that his PA Request for a regimen of 12 OT visits over 24 weeks was denied because the requested services did not meet approval criteria and had not been shown to be a “medically necessity” as defined in the Wisconsin Administrative Code.
5. On May 11, 2016, an Individualized Education Program was drafted by the petitioner’s school system providing that he will receive OT services at the rate of 60 minutes per week, plus an occupational therapy consult of 30 minutes per quarter; plus a 15 minute Physical Therapy consult every trimester; plus Special Education Services of 30 minutes per day in the 4K classroom and 30 minutes per day in the Resource Room focused upon Adaptive, Behavioral and Personal-Social Skills.

6. On June 6, 2016, the petitioner, by his mother, filed an appeal with the Division of Hearings & Appeals contesting the DHS/OIG denial action of April 25, 2016.

DISCUSSION

Medical assistance covers occupational therapy if the recipient obtains prior authorization after the first 35 visits. Wis. Admin. Code, § DHS 107.17(2)(b). When determining whether a service is necessary, the Division must review, among other things, whether the service is medical necessary, the appropriateness of the service, the cost of the service, and the effective and appropriate use of available services. Wis. Admin. Code, § DHS 107.02(3)(e).

“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;
 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. HFS 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’s primary diagnosis, indeed the only diagnosis stated in the PA/RF document, is “emotional lability”.

Here, OT Consultant [REDACTED] review the Prior Authorization Request Form and supporting clinical documentation and found it woefully inadequate. She summarized her determination as follows, in the parts relevant here:

.....Therapy is required when there are specific deficits or limitations that prevent or reduce independence in activities of daily living. Therapy is required when the asserted reason for a presenting concern is confirmed in the evaluation of the member. The OIG does not find this is established in the submitted record from the requesting provider. The OT evaluation does not included specific limitation or problems that have been measured in specific, objective terms.

The OIG does not contest that the member may have any number of challenging activities but the requesting provider’s evaluation and assessment are incomplete and do not

establish a requirement for the requested OT services. The presence of symptoms or problems does not constitute a requirement for therapy. A therapy provider must present evidence that an asserted functional problem is correlated with a treatment limitation that can be objectively quantified and qualified and the evaluation must document the baselines of all problems.

See, Exhibit #1, Summary of [REDACTED] OTR Consultant, dated July 5, 2016, at pp. 3 of 4.

[REDACTED] then goes on to cite the Long Term Goals and Short Term Goals of treatment recounted fully in Finding of Fact #3, above, and noting that none of these goals are expressed in comparison to objective baselines that can be quantified, and more importantly compared to with progress under therapeutic intervention to demonstrate efficacy of treatment in an ongoing fashion. *Ibid*, at, p. 3.

Another decision of the Division of Hearings and Appeals aptly states what is required of a provider and highlights the deficiencies in this PAR:

“An effective proposal for ... therapy must follow a several step process. It must first determine the nature of the recipient’s disability and the limitations that that disability imposes upon him. Second, it must set goals to help the recipient live with the disability. Third, it must develop a treatment plan that has a realistic chance of accomplishing the goals. Finally, to determine whether the therapy meets these criteria, the provider must perform tests that consistently and accurately measure performance. If the therapy does not meet these criteria, it fails the medically necessary test because it is not consistent with the recipient’s symptoms or with treatment of the recipient’s disability.”

DHA Case No. MPA-55/53461 (Wis. Div. Hearings Appeals July 29, 2001)(DHFS), at pp. 2-3.

The petitioner and Ms. [REDACTED] must show by the preponderance of the credible record that the request therapy is medically necessary. *Medically necessary* as it pertains here is a legal term whose definition was provided, above. They have not met that burden. The diagnostic clinical information is very weak and very vague. The goals of the regimen are expressive and qualitative, but not sufficiently quantitative or measurable. The vague statement of the goals means that progress, or the lack thereof, cannot be measured over the course of therapy. Because the baselines are wholly inadequate, one can never say with any certainty that the regimen is working, or is not working, or is only minimally working. Everything is mere conjecture. That clinical statement of the therapeutic problem then, is, for all practical purposes, worthless in testing the ongoing medical necessity of a regimen of therapy.

Therefore, I must uphold the Office of Inspector General’s decision to deny the requested therapy.

Finally, as a side note to the petitioner’s mother, up to 35 initial OT visits per spell of illness may occur *without* Prior Authorization. These 35 visits are counted as visits for OT paid by any party. Wis. Admin. Code §DHS 107.17(2)(b). This would include Birth-to-Three OT visits. Such OT services are claimed for payment directly by a provider, not through the instant Prior Authorization process used here. The provider in such an event must establish that less than 35 OT visits have occurred and bears the risk of having a claim for payment denied if he or she is wrong and MA discovers that more than 35 visits have occurred. She may desire to discuss such limited services with her son’s OT providers to see if he has already received 35 OT visits under an initial spell of illness, or not. Such a determination is not part of the PA process and not part of this decision either. This information is solely provided to the petitioner to clarify the law. A copy of the Code provision is attached for information purposes only.

CONCLUSIONS OF LAW

That the petitioner has not established by a preponderance of the evidence in this record that she is eligible for coverage by prior authorization of occupational therapy services, or otherwise eligible without prior authorization either.

THEREFORE, it is

ORDERED

That the petition for review herein be, and the same hereby 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 3rd day of August, 2016

\s _____
Kenneth D. Duren
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 August 3, 2016.

Division of Health Care Access and Accountability