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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION
Case #: MPA - 175609

PRELIMINARY RECITALS

Pursuant to a petition filed on July 14, 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 (DHCAA) denying a Medical Assistance (MA) prior authorization request for speech therapy, a hearing was held on August 25, 2016, by telephone.

The issue for determination is whether the DHCAA properly denied the prior authorization request for speech therapy.

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: written submission from [REDACTED], SLP consultant
Division of Health Care Access and Accountability
PO Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Kristin P. Fredrick
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner [REDACTED] is a thirteen year old resident of Adams County.
2. Petitioner has a diagnosis of Apraxia, which is a communication disorder that impacts speech production.
3. Petitioner receives speech and language services from his school pursuant to an Individual Education Plan (IEP) with the goal to increase speech and language skills as measured by the independent production of certain sounds and words.
4. On May 10, 2016, Moundview Memorial Hospital & Clinics, Inc. submitted a prior authorization on behalf of the petitioner requesting speech therapy services at a frequency of two sessions per week for 16 weeks beginning June 6, 2016.
5. On May 24, 2016, the Division of Health Care Access and Accountability (DHCAA) requested additional documentation from the provider to support the prior authorization request. Thereafter, the provider submitted a pediatric speech-language evaluation dated June 14, 2016, a letter dated June 8, 2016 from [REDACTED], a letter dated June 3, 2016 from a school SLP [REDACTED], and the petitioner's IEP from November 2015.
6. During the school year petitioner received speech and language services from his school pursuant to his IEP at a frequency of 20 minutes, 4 times per week; as well, in prior summers, the petitioner also received speech therapy through the school.
7. The petitioner's IEP describes various methods used over the years to improve the petitioner's speech issues, but all have resulted in limited increase in petitioner's speech accuracy and correct sound production.
8. According to the IEP, the petitioner has access to augmentative communication systems and devices to communicate.
9. According to the petitioner's school speech pathologist, [REDACTED], the petitioner "made significant progress this school year with spontaneously producing speech."
10. The petitioner's IEP and [REDACTED] [REDACTED] indicate that the petitioner was to receive speech/language services at the school over the summer twice weekly (20 min/session).
11. Despite a recommendation from the school speech pathologist that the petitioner receive speech therapy over the summer, petitioner's mother chose not to take advantage of summer speech and language services offered to the petitioner from the school this year given her belief that the petitioner did not show improvement from the speech therapy offered at the school in the past. Instead, petitioner's mother desired that the petitioner receive speech therapy from [REDACTED] [REDACTED] at Moundview Memorial Hospital given her belief that Mr. [REDACTED] methodology would be different from the school's therapy and given her hope that a different methodology might allow the petitioner to "make a jump in his progress."
12. According to the petitioner's mother, apart from having conducted speech/language evaluations of the petitioner, Mr. [REDACTED] has not otherwise previously provided speech/language therapy services to the petitioner.
13. The speech goals for petitioner identified by Mr. [REDACTED] in support of the prior authorization were similar to the school's IEP goal to have the petitioner work on the production of certain sounds and words. Moreover, as part of the prior authorization submission, Mr. [REDACTED] indicated that the provider "will follow the IEP protocol set forth from the school and parent. The patient will be doing outpatient speech 2 times a week for 16 weeks for the summer." In her testimony, petitioner's mother acknowledged that the goals of both the IEP and the proposed services to be

provided by Mr. [REDACTED] at Moundview Memorial Hospital were similar and only the methodology differed between the two.

14. On June 27, 2016, DHCAA denied petitioner's prior authorization request for speech therapy on the basis that the requested services were not medically necessary.
15. On July 14, 2016, petitioner appealed the DHCAA's denial of the prior authorization for speech therapy.
16. Over the summer months of 2016, the petitioner did not participate in speech therapy through school nor did he receive speech therapy from Mr. [REDACTED] at Moundview Memorial Hospital.

DISCUSSION

Speech and language therapy is an MA-covered service, subject to prior authorization. Wis. Admin. Code, §DHS 107.18(2). In determining whether to approve such a therapy request, the DHCAA employs the generic prior authorization criteria found at §DHS 107.02(3)(e). Those criteria include the requirements that a service be medically necessary, appropriate, and an effective use of available services. Included in the definition of "medically necessary" at §DHS 101.03(96m) are the requirements that services not be duplicative of other services, and that services be cost effective when compared to alternative services accessible to the recipient. 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. Prior Authorization Guidelines Manual, Speech Therapy, page 113.001.03.

It is up to the provider to justify the provision of the service. §DHS 107.02(3)(d)6. An applicant will need to demonstrate that the procedure for which he or she seeks approval is "medically necessary." A "medically necessary" service is

[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 diagnosis, 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) (emphasis added).

The DHCAA determined that there was insufficient documentation to support a showing of medical necessity for outpatient private speech therapy above what the petitioner was offered at school. In response, the petitioner's mother testified to her belief that the prior authorization was medically necessary because: (1) the petitioner had not shown sufficient improvement under the school's speech therapy alone; and her belief that (2) the proposed therapy methodology used by Mr. [REDACTED] at Moundview Memorial Hospital would be a better match because according to the petitioner's mother it would focus more on motor planning and physical/manual manipulation than what the school provided. The petitioner's mother testified that it was her hope that her son would make more progress through the provider's therapy (although at the time of the hearing, the petitioner had not participated in speech therapy with the provider, so any outcome was speculative at best).

Similarly, under the heading "Justification for Skilled Speech Services:" of his June 14, 2016 Pediatric Speech-Language Evaluation report, page 3, Mr. [REDACTED] states as follows:

I would very much appreciate the opportunity to work with [REDACTED] for the summer in an effort to increase his verbal skills set and as important his confidence in working on his speech. He needs to see gains and family needs to know how to work on the words and how to accept some approximations as well as the words of 100% clarity. Therapy is an art and not a science so treatment is not always – it can be very provider dependent. The mother and his physician would like to have this opportunity to see if we can achieve better results by a different approach. That appears to be a reasonable request.

It is the responsibility of the fee-for service provider to justify MA coverage of the service to the Division. The fee-for-service provider has specified a number of specific goals. However, DHCAA established that those goals were either duplicative of petitioner's school speech and language therapy and/or that there was no documentation to support requiring outpatient private speech therapy in addition to what the school would offer petitioner. While the provider and petitioner's parent's efforts and desire for [REDACTED] to achieve as much progress as possible in his speech therapy is commendable, the petitioner has not established that the requested private SLT is medically necessary under the applicable standards set forth above and further that it is not duplicative of what already exists, was offered, reasonably accessible and/or cost-effective through the school. Accordingly, for the above reasons, I conclude that the Department correctly denied the petitioner's prior authorization (PA) request for private speech therapy. Going forward, should the provider be able to establish that the proposed speech therapy meets the "medically necessary" standard, as opposed to merely being desirable or with a hope of achieving better results, then the provider can always file a new prior authorization request.

CONCLUSIONS OF LAW

The Department correctly denied the petitioner's prior authorization request for private speech therapy due to failure to establish the medical necessity of those services.

THEREFORE, it is

ORDERED

The petition for review herein be and the same 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, **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 29th day of August, 2016

\s _____
Kristin P. Fredrick
Administrative Law Judge
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on August 29, 2016.

Division of Health Care Access and Accountability