

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

1. The petitioner is presently twenty-one years old. On September 23, 2006, petitioner was severely injured in a car accident. He suffered a number of injuries including traumatic brain injury (TBI). Prior to the car accident, petitioner was a business major at the University of Vermont. As a result of petitioner's TBI, he has experienced

significant problems with memory, balance and coordination, executive functioning, and insight into the extent of his injuries.

2. Petitioner was released to his family's care during January 2007. Petitioner then started speech therapy with K.F. who is speech language therapist employed by a local home health agency.

3. Petitioner received Medicaid coverage for speech therapy for an initial four month period of January 29 through May 29, 2007 based on the diagnoses of brain injury and memory loss. The regulations, *infra*, allow an initial four month period of therapy and allow prior authorization for two additional four month periods or a maximum of one year of therapy. In exceptional circumstances, prior authorization can be granted for therapy beyond one year's services.

Petitioner received prior authorization for two additional periods of four months. When petitioner was approved for services for the third period (September 30, 2007 through January 29, 2008), he was informed that this was his final certification period for speech therapy.

4. On or about January 23, 2008, petitioner requested prior authorization for an additional four month period of

speech therapy or 24 visits. K.F. submitted the request on petitioner's behalf and included three treatment goals.

These goals were:

Goal 1: [petitioner] will demonstrate increased initiative and ownership of his recovery process to bring at least one question or challenge he's experiencing to each therapy session.

Goal 2: [petitioner] will ... [report] back weekly on strategies he is using and developing to manage memory demands of conversation, schedule-keeping, and task completion.

Goal 3: [petitioner] will demonstrate regular, functional use of a notetaking strategy for managing new information in READING material.

5. OVHA denied petitioner's request for prior authorization on January 25, 2008 noting that petitioner had not supplied information that he met the eligibility criteria for coverage beyond the one year period allowed under the applicable regulations.

6. K.F. sent in a request for fair hearing on petitioner's behalf to OVHA on or about January 30, 2008. In his request, K.F. explained that petitioner was still recovering. He wrote:

[petitioner] is just reaching the point where he has some insight into what kinds of things he is likely to remember, and which things he needs to employ some kind of compensatory strategy to remember. He is still in the early stage of taking control of his own compensatory strategies.

. . .

[petitioner] still needs to make more gains before he can function independently and successfully in his community. He demonstrates a significant, ongoing need for the support of ongoing speech-language therapy to target a critical piece of his recovery: his own ownership and initiative with using the compensatory strategies he has been learning and practicing.

7. S.M., OVHA reviewer, contacted K.F. to suggest that the services be covered through Vocational Rehabilitation (VR). K.F. was informed by VR that the services were medical and could not be covered by VR. S.M. asked K.F. whether there were goals that were noneducational or community based. K.F. submitted the following goals to OVHA:

Goal 1: [petitioner] will demonstrate sequencing skills, organizational skills, attention skills, safety skills (judgment) and problem solving in using the stove or oven to prepare at least 2 small meals for himself per week.

Goal 2: [petitioner] will demonstrate improved organization and planning strategies by setting his alarm and independently getting up and dressed on a timely basis each day.

Goal 3: [petitioner] will demonstrate safety and problem solving skills by demonstrating he would be able to independently handle a medical emergency...

Goal 4: [petitioner] will demonstrate organization, planning and problem solving skills by independently refilling his own medications.

S.M. wrote in OVHA's Medical Basis Statement that petitioner met the first prong of the regulations by

demonstrating services that fit within the Medicaid program but that petitioner did not meet the second prong because there was no showing that his condition would worsen without the additional therapy sessions.

8. K.F. continued to provide petitioner speech therapy. K.F. found that petitioner met his goals after six additional sessions and is only seeking reimbursement for the six additional sessions.

9. K.F. testified that it is typical in TBI cases to be in the midst of recovery even when the client has been home for one year. He requested the additional therapy sessions because he believed that petitioner had not met his goals. He indicated that it can be difficult to predict when a particular person will meet his/her goals. K.F. testified that petitioner made great strides during the third period and during the additional therapy sessions including meeting the goals petitioner needed to live independently. K.F. indicated that without the additional therapy sessions petitioner may have needed a longer period to meet his goals, may have been unable to meet these goals, or may have learned dependency.

10. Petitioner's mother confirmed the great strides petitioner made through the additional therapy sessions.

11. Because petitioner's request had changed from twenty-four sessions to six sessions, OVHA was asked to reconsider whether the reduction in sessions and the testimony regarding petitioner's needs would lead to a different result. OVHA declined to change their decision.

ORDER

OVHA's decision to deny prior authorization for speech-language therapy in excess of one year is affirmed.

REASONS

OVHA has set out regulations for the coverage of therapy services that specify the amount, scope and duration of services. Therapy services include speech therapy. M710.

M710.4 allows therapy services for a four month period. Additional therapy services will not be allowed unless the request meets the prior authorization requirements in M710.5 which states:

Provision of therapy services (physical, speech or occupational) beyond the initial four-month period is subject to prior authorization review. To receive prior authorization for these services during the eight-month period following the initial four-month period, a physician must submit a written request to the department with pertinent clinical goals and estimated length of time.

Prior authorization for therapy services beyond one year from the onset of treatment will be granted only:

- if the service may not be reasonably provided by the patient's support person(s), and
- if the patient undergoes another acute care episode or injury, or
- if the patient experiences increased loss of function, or
- if deterioration of the patient's condition requiring therapy is imminent and predictable.

OVHA has the authority to place appropriate limits on medical services including duration. 42 C.F.R. § 440.230(d). OVHA did so by providing an initial four month period of eligibility and using prior authorization procedures for two additional four month periods of coverage for a total of one year of coverage. OVHA recognized that services needed to be provided after the one year period in certain situations by setting out criteria to address acute episodes or a beneficiary's worsening condition.

Based on the above criteria, petitioner had to meet two prongs of the above regulation. Petitioner met the first prong since the requested services were medical in nature and could not be provided by support persons. The problem is that petitioner did not meet the second prong of the regulation.

There is no question that the additional services were beneficial to petitioner since he now has skills necessary to

live independently. But, the second prong is not based upon improving a beneficiary's skills; the second prong is based on either preventing the beneficiary's condition from deteriorating or responding to an acute episode or stopping loss of function.

Petitioner did not sustain his burden of proving by a preponderance of evidence that he met the criteria in the above regulation's second prong for prior authorization.

In light of the above, OVHA's decision that petitioner did not meet the criteria for extension of speech therapy beyond one year is affirmed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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