

**PARTIAL SETTLEMENT AGREEMENT
EXHIBIT B**

DOCKET NO. _____

BEFORE THE
HEALTH & HUMAN SERVICES COMMISSION
CUSTOMER RELATIONS SERVICES

IN THE MATTER
OF
PETITIONER'S NAME

§
§
§
§

FAIR HEARING DECISION

ON [date], [Petitioner's name], Petitioner, appeared [in person/by telephone] before the undersigned Hearing Official to appeal the [denial/termination/reduction] of [prior authorization/services] by [Responsible Entity—e.g., NHIC, HMO, etc.]. A fair hearing was conducted to resolve the appeal and is designated by the docket number and style above. This document, and any exhibits, attachments or evidence appended or incorporated by reference to this document, represent the Decision and Order of the Health and Human Services Commission (HHSC) in the matter identified above.

D R A F T
INTRODUCTION

A. Legal Authority

The fair hearing was conducted under the authority provided by [statutes and regulations].

B. Purpose of Fair Hearing

The purpose of the fair hearing was to determine whether the [denial/reduction/termination] of [prior authorization/services] by [Responsible Entity—e.g., NHIC, HMO, etc.] was erroneous or whether a request for prior authorization was acted upon with reasonable promptness.

C. Statement of the Issue

The issue raised in this hearing is whether NHIC correctly reduced Petitioner's occupational therapy from twice a week to once a week.

II. PROCEDURAL HISTORY

[Provide, in separately numbered paragraphs, a concise description of the procedural history of the case, e.g.:

- When the request for authorization was filed, by whom, and when;
- Provide the same information for the request for fair hearing;
- Provide a description of the basics of the fair hearing, including—
 - Date and time of the fair hearing;

- *Whether the fair hearing was conducted in person or by telephone;*
- *The names of—*
 - *The Petitioner's designated representative(s) (if any);*
 - *The representative(s) (if any) of the Responsible Entity; and*
 - *Any third parties present at and participating in the fair hearing.*
 - *NOTE: If third parties are present and are neither the designated representatives of the Petitioner, the program, or the Responsible Entity, consult with HHSC Legal to determine the need to obtain a waiver of confidentiality from the Petitioner.]*

Sample language follows:

1. On May 15, 2001, the Acme Rehabilitation Center submitted a request for prior authorization to provide Petitioner, _____ two sessions of occupational therapy per week for the time period June 1, 2001, through August 31, 2001. The National Heritage Insurance Company ("NHIC"), the contracted claims administrator for the Medicaid program, denied the request for two sessions per week but authorized one session per week. NHIC sent a notice of the denial to Petitioner dated May 20, 2001, stating that the "requested services are not medically necessary because the goals described in the documentation submitted by your provider can be met with one therapy session per week." A copy of the Notice is appended to this Decision and Order as Exhibit 1.
 2. On May 23, 2001, Petitioner's grandmother, Ms. _____, requested a fair hearing. Petitioner's request is appended to this Decision and Order as Exhibit 2.
 3. An in-person hearing was convened in Austin, Texas, at 10:00 a.m., on June 25, 2001. The record was held open for written statements from the parties until July 5, 2001. The record was closed on July 6, 2001.
 4. Appearances on behalf of Petitioner were:
 - Ms. _____, grandmother of _____
 - Cornelius Wyley, M.D., _____'s physician
 - Pamela Fox, OTR, _____'s occupational therapist.
- Appearances on behalf of Agency were:
- Ms. Virginia Ness, R.N., NHIC representative.

5. Petitioner and NHIC presented evidence at the fair hearing. This evidence is identified in Exhibit 3, which is appended to this Decision and Order.

III. SUMMARY OF EVIDENCE

[Describe, in separately numbered paragraphs, the relevant evidence, as required by 42 C.F.R. § 431.244, including reference to the list of exhibits accepted on behalf of Petitioner and the Responsible Entity and any additional submissions obtained at the hearing.]

Sample language follows:

A. Evidence on behalf of NHIC.

1. Ms. Virginia Ness, R.N., NHIC representative, testified that she reviewed the documentation submitted by Acme Rehabilitation Center in support of its request for prior authorization and that, in her opinion, the goals described in the documentation could be met with the provision of one therapy session per week.
2. Ms. Ness, R.N., also testified that the provider failed to submit information regarding the percentage of appointments kept during each six-month period and an assessment of family involvement in therapy.

B. Evidence on behalf of Petitioner

1. Petitioner's grandmother, Ms. _____ testified that _____ is nine years old and has been receiving two sessions per week of occupational therapy for the past five years. Ms. _____ testified that the purpose of the therapy is to help her granddaughter increase her fine motor skills and maintain her flexibility.
2. Petitioner's physician, Dr. Wyler, testified that _____ has a diagnosis of cerebral palsy with spastic quadriplegia resulting in apraxia, hypotonicity of musculature, and poor motor coordination. Dr. Wyley testified that he prescribed two sessions per week of occupational therapy so that _____ can meet the goals outlined in her therapy plan.
3. Petitioner's occupational therapist, Ms. Fox, OTR, described the goals in _____'s therapy plan and explained why, in her opinion, _____ requires two sessions per week of occupational therapy in order to meet these goals. Ms. Fox testified that, given Petitioner's age and the severity of her contractures, one therapy session per week will not allow Petitioner to sufficiently increase her fine motor skills or decrease her hypotonicity.

IV. RELEVANT AUTHORITIES

[Identify the relevant or applicable state or federal statute, federal regulation, administrative rule, program guidance (e.g., Texas Medicaid Provider Procedures Manual, Medicaid Bulletin)]

- A. Pertinent Federal Regulations
- B. Pertinent State Law and Administrative Rules
- C. Pertinent Medical Policy and/or Procedure

V. FINDINGS OF FACT

The Hearing Official has carefully considered all of the credible and available evidence in this matter, and on that basis, makes the following findings of fact:

1. The NHIC denial notice was mailed to Petitioner on May 20, 2001. The denial notice failed to indicate the agency policy or the accepted standard of medical practice on which the denial was based.
2. Petitioner's grandmother, Ms. _____, made a timely request for a fair hearing on May 23, 2001.
3. Petitioner is an eligible Medicaid beneficiary under the age of 21.
4. Petitioner is nine years old and lives with her grandmother. She has a diagnosis of cerebral palsy with spastic quadriplegia resulting in apraxia, hypotonicity of musculature, and poor motor coordination.
5. Dr. Wyley is a pediatrician who has specialized in treating children with physical disabilities for the past 22 years. He has been Petitioner's treating physician for six years.
6. Ms. Fox is a Texas licensed occupational therapist and has been an occupational therapist for 15 years. Ms. Fox has been Petitioner's treating occupational therapist for four years.
7. Acme Rehabilitation Center is a Medicaid provider enrolled in the Texas Medical Assistance Program.
8. Petitioner began receiving occupational therapy at the age of four. Treatment goals have been directed at addressing muscle tone, postural control, praxis and bi-lateral coordination.
9. Petitioner has been receiving occupational therapy twice a week for five years and, while she has made some progress, she continues to show significant weaknesses in her overall fine motor skills.
10. Petitioner's current occupational therapy goals are to:
 - (a) improve visual motor skills;
 - (b) increase upper limb speed and dexterity;
 - (c) improve balance between flexor and extensor musculature;
 - (d) increase motor planning abilities;
 - (e) enhance quality of movement; and

- (f) increase functional shoulder, arm, and hand control.
11. Ms. Ness, R.N., NHIC representative, did not explain a medical basis, applying the agency policy or the accepted standard of medical practice, for her opinion that Petitioner's treatment goals can be achieved with the provision of one therapy session per week.
 12. Petitioner requires occupational therapy in order to improve and maintain fine motor functioning.
 13. Petitioner requires two sessions per week of occupational therapy in order to achieve the goals set out in her therapy plan.

VI. CONCLUSIONS OF LAW

Based on findings of fact and applicable policy, the Hearing Official concludes that:

1. The Agency's denial notice, dated May 20, 2001, was legally deficient because it failed to identify the agency policy or the accepted standard of medical practice on which the denial was based.
2. Ms. _____ timely filed this appeal pursuant to 1 TAC § 357.5(d).
3. 42 U.S.C. § 1396r(5) and 25 TAC § 33.132 require the Texas Medical Assistance Program to provide all medically necessary services for which federal financial participation is available to Medicaid beneficiaries under the age of 21.
4. The Agency has the burden of demonstrating that NHIC correctly reduced Petitioner's occupational therapy services.
5. Occupational therapy is a benefit of the Texas Medical Assistance Program for Medicaid beneficiaries under the age of 21. Texas Medicaid Provider Procedures Manual, 40.4.6.
6. Federal regulations define occupational therapy as services prescribed by a physician or other licensed practitioner of the healing arts within the scope of his or her practice under state law and provided to a beneficiary by or under the direction of a qualified occupational therapist. It includes any necessary supplies and equipment. 42 C.F.R. § 440.110.
7. Texas Medicaid medical policy authorizes occupational therapy when documentation submitted by the beneficiary's treating physician and occupational therapist establishes treatment goals to improve function, maintain function, or slow the deterioration of function. Texas Medicaid Provider Procedures Manual, 40.4.6.
8. The percentage of appointments kept during each six-month period and an assessment of family involvement in therapy are not eligibility criteria for occupational therapy.

9. Petitioner meets the eligibility criteria for occupational therapy. Texas Medicaid Provider Procedures Manual, 40.4.6.
10. The Agency failed to offer sufficient evidence to support its decision denying two sessions per week of occupational therapy to Petitioner. 1 TAC § 357.21.
11. The decision to deny two therapy sessions per week was erroneous and is reversed. 42 U.S.C. § 1396r(5); 25 TAC § 33.132; Texas Medicaid Provider Procedures Manual, 40.4.6.

Date

[Fair Hearing Official's name]
Fair Hearing Official

DRAFT

Fair Hearing Exhibits

1. Evidence presented by Petitioner:
 - a. Dr. Wyley's' prescription for occupational therapy for _____, dated May 10, 2001.
 - b. Occupational therapy evaluation and treatment plan for _____, dated May 12, 2001, Acme Rehabilitation Center.
 - c. Occupational therapy evaluation and treatment plan for _____, dated May 5, 2000, Acme Rehabilitation Center.
 - d. Occupational therapy evaluation and treatment plan for _____, dated April 30, 1999, Acme Rehabilitation Center.
 - e. Occupational therapy evaluation and treatment plan for _____, dated May 1, 1998, Acme Rehabilitation Center.
 - f. Brown, F.F., O.T., "Addressing Fine Motor Skills for Young Children with Cerebral Palsy," Journal of Pediatric Occupational Therapy, August, 1998.
 - g. Curriculum Vitae, Samuel Wyley, M.D.
 - h. Curriculum Vitae, Pamela Fox, OTR
 - i. _____'s Medicaid Identification card.
2. Evidence presented by NHIC
 - a. NHIC denial notice, dated May 20, 2001
 - b. Case notes, Virginia Ness, R.N., NHIC
3. Post-hearing documents, if any
 - a. Petitioner's written statement, dated July 1, 2001
 - b. NHIC's written statement, dated July 1, 2001