



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/167804

PRELIMINARY RECITALS

Pursuant to a petition filed August 04, 2015, 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 in regard to Medical Assistance, a hearing was held on January 13, 2016, at Milwaukee, Wisconsin. The hearing was rescheduled on 2 earlier occasions at request of Petitioner. Additional information was submitted on behalf of Petitioner.

The issue for determination is whether the evidence is sufficient to demonstrate that personal care worker (PCW) services for Petitioner may be paid for by the Medicaid program.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Written submission of Lori [REDACTED] RN
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.

2. A prior authorization (PA) request was filed on June 19, 2015 seeking personal care worker (PCW) services for Petitioner. The PA sought 29.75 hours per week of PCW services for Petitioner as well as 24 hours to be used as needed. This was to cover a 53 week period commencing June 8, 2015.
3. The June 2015 PA was denied completely as the Department concluded that medical documentation did not show that Petitioner required assistance with his activities of daily living.
4. Petitioner is 51 years of age (DOB 7/24/64). The PA request form indicates that he lives alone in the community. The PA notes Petitioner's medical issues include lumber back issues, lumbago, surgery on left hand, hip issues, migraines and schizophrenia. At the hearing Petitioner also noted right hand carpal tunnel issues. He indicated deficits with activities of daily living as to bathing, grooming, and dressing and that he needs help with putting braces on his hands and with a back brace.

DISCUSSION

When determining whether to approve any medical service, the OIG must consider the generic prior authorization review criteria listed at *Wis. Admin. Code, § DHS 107.02(3) (e)*:

(e) *Departmental review criteria.* In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.

“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. DHS 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).

Also, the following Administrative Code provision is relevant here:

DHS 107.112 Personal care services. (1) COVERED SERVICES. (a) Personal care services are medically oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his or her place of residence in the community. These services shall be provided upon written orders of a physician by a provider certified under s. DHS 105.17 and by a personal care worker employed by the provider or under contract to the provider who is supervised by a registered nurse according to a written plan of care. The personal care worker shall be assigned by the supervising registered nurse to specific recipients to do specific tasks for those recipients for which the personal care worker has been trained. The personal care worker's training for these specific tasks shall be assured by the supervising registered nurse. The personal care worker is limited to performing only those tasks and services as assigned for each recipient and for which he or she has been specifically trained.

(b) Covered personal care services are:

1. Assistance with bathing;
2. Assistance with getting in and out of bed;
3. Teeth, mouth, denture and hair care;
4. Assistance with mobility and ambulation including use of walker, cane or crutches;
5. Changing the recipient's bed and laundering the bed linens and the recipient's personal clothing;
6. Skin care excluding wound care;
7. Care of eyeglasses and hearing aids;
8. Assistance with dressing and undressing;
9. Toileting, including use and care of bedpan, urinal, commode or toilet;
10. Light cleaning in essential areas of the home used during personal care service activities;
11. Meal preparation, food purchasing and meal serving;
12. Simple transfers including bed to chair or wheelchair and reverse; and
13. Accompanying the recipient to obtain medical diagnosis and treatment.

Wis. Admin. Code, §DHS 107.112(1)(a) and (b).

I note at this point that the Petitioner has the burden of proving that the requested therapy meets the approval criteria and that the standard level of proof applicable is a "preponderance of the evidence". This legal standard of review means, simply, that "it is more likely than not" that Petitioner and/or his/her representatives have demonstrated that the requested services meet the criteria necessary for payment by the Wisconsin Medicaid program. It is the lowest legal standard in use in courts or tribunals.

The Department provided a letter (Ex # 3) that detailed its rationale for modifying the original request for personal care services and denying the amendment. It need not be reproduced here. While it did not dispute that Petitioner has medical difficulties, the Department did not conclude that it could approve any time as it found that medical records do not support the need for assistance with activities of daily living.

Petitioner's testimony was that his hands are compromised by surgery and injury to the point that he is unable to use them to grasp objects so that he has trouble with bathing, grooming, dressing and braces.

I can see the Department's point as to Petitioner's medical records. And the personal care screening tool does not match the medical records – it seems to overstate Petitioner's deficits. I also note that by the time

of the hearing it was almost 8 months into the time period to be covered by this request for PCW assistance.

Nonetheless, the testimony and evidence offered on behalf of Petitioner does support the need for some PCW assistance. I am, therefore, approving some PCW time for the remainder of 53 week time period that began June 8, 2015 – in other words about 4 months. I am approving 30 minutes per day for bathing, 20 minutes per day for grooming, 20 minutes per day for dressing (10 for the upper body and 10 for the lower) and 20 minutes per day for assistance with doffing and donning the wrist and back braces. This totals 90 minutes per day. With an additional 25% added as Petitioner lives alone, this totals 112.5 minutes per day. Rounded up this is 2 hours per day or 14 hours per week.

I will also say that without a more realistic personal care screening tool – one that matches medical documentation - for any future request it is not likely to be approved by the Department or, if appealed, the Division of Hearings and Appeals. Part of my willingness to provide some assistance for Petitioner here comes from the strength of his assistance with the hearing by staff of the [REDACTED] Clinic.

Finally, Petitioner may also wish to explore the Family Care program. The place to start for information as to those services is:

Disability Resource Center (DRC) of Milwaukee County
Phone: (414) [REDACTED]
TTY/TDD/Relay: 711
Email: InfoMilwDRC@milwcnty.com
Office Location:
[REDACTED]
Milwaukee, WI 53205

The provider will not receive a copy of this Decision. Petitioner may provide a copy of this Decision to the provider.

CONCLUSIONS OF LAW

That the evidence is sufficient to demonstrate that 14 hours of personal care worker services may be provided via Medicaid payment to Petitioner from the date of this Decision to June 15, 2016.

THEREFORE, it is ORDERED

That Petitioner’s provider is authorized to bill the Wisconsin Medicaid program for 14 hours or 56 units per week of personal care worker services from the date of this Decision to June 15, 2016. Petitioner’s provider should submit a copy of this decision to Forward Health, along with its invoice, for the time allowed herein.

In all other respects, this appeal 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 Milwaukee,
Wisconsin, this 17th day of February, 2016

\sDavid D. Fleming
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 February 17, 2016.

Division of Health Care Access and Accountability