



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

In the Matter of

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

DECISION

MPA/169880

PRELIMINARY RECITALS

Pursuant to a petition filed November 02, 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 (DHCAA) in regard to Medical Assistance (MA), a telephonic hearing was held on December 15, 2015, at Milwaukee, Wisconsin. The record was held open for 14 days to allow time for petitioner to submit additional information, and to allow the DHCAA time to review and comment, which occurred by way of a letter dated December 17, 2015.

The issue for determination is whether the OIG correctly denied petitioner’s prior authorization (PA) request for personal care worker (PCW) services.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

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

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Respondent:

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

By written submittal of: Robert Derendinger, RN BSN
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County. He is [REDACTED] years old and is diagnosed with Autism.
2. On September 7, 2015 the petitioner's PCW provider, [REDACTED] submitted a PA for petitioner to receive PCW services in the amount of 30.75 hours per week, to start September 10, 2015.
3. On October 6, 2015 the DHCAA issued a notice of denial to the petitioner because it determined that the PCW services were not shown to be medically necessary.

DISCUSSION

MA coverage of PCW services is described in the Wis. Adm. Code, §DHS 107.112. Covered services are specified in subsection (1), and are defined generally as "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." Examples of covered services are assistance with bathing, with getting in and out of bed, with mobility and ambulating, with dressing and undressing, and meal preparation. In determining the number of PCW hours to authorize the OIG uses that standard along with the general medical necessity standard found at Wis. Adm. Code, §DHS 101.03(96m). It provides:

"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).

The OIG denied the PA request because it determined that the documentation submitted with it did not support the medical necessity of the hours requested. In reviewing the information submitted by the provider, I can see how the OIG was unable to determine that the requested PCW hours were medically necessary.

The petitioner was represented at hearing by his grandmother and mother who clearly want the best for this child. They described how petitioner requires constant redirection, needs assistance with meal

preparation, brushing teeth, showering, nail care, dressing and after occasional toileting accidents. They also testified that petitioner requires constant supervision due to his Autism.

The enumerated PCW covered services include:

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. Adm. Code, §DHS 107.112(b).

First, supervision is not a PCW service covered under MA. It appears from the preponderance of the evidence that supervision is petitioner's main need. However, constant supervision *of a PC service* is reserved for members who cannot perform the personal care activity without continuous direction from a PCW *and* if the PCW physically intervenes to ensure the member performs the activity safely. The PCW must be actively involved in *directing* the member during the execution of the activity *and physically participate* in one or more steps of the activity the member is performing. Watching the member executing the task by himself or herself without physical intervention is not "constant supervision." See Prior Authorization : Personal Care Screening Tool, available at <https://www.forwardhealth.wi.gov/WIPortal/Online%20Handbooks/Display/tabid/152/Default.aspx?ia=1&p=1&sa=47&s=3&c=565&nt=Parameters+for+Making+Selections>.

Another problem with the petitioner's case is the documentation. First, the Personal Care Screening Tool (PCST) completed on August 24, 2015 for the petitioner by the provider indicates a much different and higher level of care needed than what was testified to at hearing, and than what was captured through the Long Term Care Functional Screen (LTCFS) in July 2015, completed just one month earlier than the PCST. For example, the LTCFS found that petitioner needed cueing and supervision for bathing tasks, while the PCST lists him as a level "D" which is selected for someone who is able to bathe in shower, tub or bed with partial physical assistance from another person. Yet the screener's note on the PCST says that petitioner can participate with cueing. Petitioner's representatives at hearing testified that he requires assistance with bathing because "he just doesn't get it" and needs help washing his neck and ears. The inconsistency of the information between the different screeners goes on for the other ADLs as well. And to further the point, I add that the PCST lists petitioner as a level "C" for transfers, which is selected for someone who is able to transfer himself but requires the presence of another person throughout the task for constant supervision to provide immediate intervention to ensure completion of the task and provide physical intervention for a least one step of the activity. Petitioner's representatives testified at hearing that petitioner required no assistance with transfers, except that sometimes he might do it too quickly and they have to watch him.

I therefore must conclude that the DHCAA was correct in its denial of the PA. As in all prior authorization request cases, the petitioner bears the burden of proving the services he requests are necessary, and that has not been done. Petitioner is essentially at the mercy of the provider who is required to justify the requested services and should know how to navigate the complexities involved with a PA request like we have here. The provider may be able to file another amendment to the prior authorization request correcting the problems and explaining more fully the need for the hours and explaining the selections made versus those in the LTCFS. I suggest that the petitioner, his provider, and the medical specialists he sees review his PCW needs and that they provide increased documentation to support a new request for additional ongoing PCW time, including physician orders for same. Even the new letter from petitioner's psychologist does not confirm the medical necessity of the PCW services. It did not support the medical necessity of the hours requested because it did not show what functional limitations petitioner has that require the PCW assistance and for which activities of daily living require assistance, if any, beyond supervision. I also add, that I agree with the DHCAA that the most appropriate supply or level of service that can safely and effectively be provided to the recipient is his parent for meal preparation. This is not intended to diminish the challenges petitioner and his family face, but rather to explain that the documentation must be there to support the requested services.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The DHCAA correctly denied petitioner's PA request for PCW services.

THEREFORE, it is

ORDERED

That the petition for review herein 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 27th day of January, 2016

\sKelly Cochrane
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 January 27, 2016.

Division of Health Care Access and Accountability