



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted case name]

DECISION

MPA/172106

PRELIMINARY RECITALS

Pursuant to a petition filed February 16, 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 in regard to Medical Assistance (MA), a hearing was held on April 21, 2016, at Oshkosh, Wisconsin.

The issue for determination is whether the evidence is sufficient to demonstrate that additional 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 petitioner name]

Petitioner's Representative:

Attorney Vanessa A. Kuettel
404 North Main Street, Ste 702
Oshkosh, WI 54901

Respondent:

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

By: [Redacted signature]

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 Winnebago County.
2. A prior authorization request was filed on behalf of Petitioner on or about November 9, 2015. It sought 14 units per week (with a unit = 15 minutes this is 3.5 hours per week) of personal care worker (PCW) services for 53 weeks as well as 28 units (7 hrs/wk) of travel time.

3. The requested travel time was approved.
4. The Department approved 2 hours per week/8 units per week of PCW services.
5. Petitioner is 49 years of age (DOB 5/30/1969). The PA notes her diagnosis as schizophrenia. She does have auditory and visual hallucinations. She takes 10-12 medications 2 times per day. She also uses an inhaler twice a day. The requested services here are to assist Petitioner with taking her medications.

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).

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. As I understood it, it essentially argues that it has approved 17 minutes per day of PCW services and a unit of service includes up to 22 minutes of time and that 11 minutes per visit should be enough to enter Petitioner’s home, locate prepackaged medications and have Petitioner take them.

Testimony elicited by Petitioner’s attorney was that Petitioner takes 10-12 pills per visit and has to puff from an inhaler. Further, charting as to the medications taken is required. The testimony was that these tasks coupled with Petitioner’s psychiatric behaviors require more than 11 minutes per visit. This testimony was credible. I am approving the requested 3.5 hours per week of PCW time; this is a total so includes time enhancers for behaviors and services incidental to tasks.

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 the requested 3.5 hours (14 units) of personal care worker services per week may be provided via Medicaid payment to Petitioner.

THEREFORE, it is

ORDERED

That Petitioner’s provider is authorized to bill the Wisconsin Medicaid program for 3.5 hours or 14 units per week of personal care worker services per week. Petitioner’s provider should submit a copy of this decision to Forward Health, along with its invoice, for the time allowed herein.

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 2nd day of June, 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 June 2, 2016.

Division of Health Care Access and Accountability
Attorney Vanessa Kuettel