



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

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In the Matter of

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

DECISION

MPA/172139

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 17, 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 (DHCAA) in regard to Medical Assistance (MA), a telephonic hearing was held on March 10, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the OIG correctly denied the personal care worker (PCW) hours for petitioner pursuant to her prior authorization (PA) request.

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: [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:**

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County. She is 11 and her diagnoses include Blount's Disease and asthma.
2. On January 13, 2016 the petitioner's PCW provider, [REDACTED], submitted a PA amendment for petitioner to receive an additional 38.5 hours/week of PCW services, to start November 19, 2015.
3. On February 10, 2016 the DHCAA issued a notice of denial for the amendment to PCW services because the services could not be backdated and because 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 DHCAA 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 DHCAA denied the PA amendment in this case for a couple of reasons. First, it determined that the PA amendment was not submitted timely as the request was for services required 5 months prior to the date the PA amendment was submitted. Pursuant to Wis. Adm. Code §DHS 107.02(3)(c), if "prior authorization is not requested and obtained before a service requiring prior authorization is provided, reimbursement shall not be made except in extraordinary circumstances such as emergency cases where the department has given verbal authorization for a service." Per the agency's policy backdating would

only be allowed in very narrow circumstances, none of which apply to this case. See Exhibit 3, Attachment 3; also available online at <https://www.forwardhealth.wi.gov/WIPortal/Subsystem/KW/Display.aspx?ia=1&p=1&sa=47&s=3&c=81&nt=Backdating>. I also add the following for petitioner's mother's benefit:

**(c) *Prior authorization of services.*** When a service must be authorized by the department in order to be covered, the recipient may not be held liable by the certified provider unless the prior authorization was denied by the department and the recipient was informed of the recipient's personal liability before provision of the service. In that case the recipient may request a fair hearing. Negligence on the part of the certified provider in the prior authorization process shall not result in recipient liability.

Wis. Adm. Code, §DHS 104.01(12)(c).

The DHCAA also found that the documentation submitted with the PA amendment did not support the medical necessity of the hours requested. Her past clinical notes do not show the limitations that the PCST suggests and the petitioner's physician's nurse affirmatively stated to the DHCAA that petitioner did not have the limitations suggested and that petitioner should have no need for assistance with activities of daily living. In reviewing the information submitted by the provider, I can therefore see how the DHCAA was unable to determine that the PCW services were medically necessary.

Petitioner's mother, who clearly wants the best for her daughter, appeared at hearing but could not provide much in the way of testimony or documentation to support a different finding - appearing essentially at the mercy of a provider who is far more familiar with navigating the complexities of completing a prior authorization request. She also submitted a letter from petitioner's physician, but it only states that petitioner cannot be left home alone after school. It does not identify any physical limitations for that statement and does not rebut what his nurse already stated to the DHCAA. As stated above, the PA fails to show through her medical documentation that the PCW services are medically necessary, and it was not submitted timely. And while I do not doubt petitioner may have some limitations, they must be identified and verified so that petitioner's condition is clear to the agency and based on the orders of her physician as required under MA rules. Again, it is the provider's duty to justify the provision of the services. As an MA-certified provider, providers who request the MA program to reimburse for their services are required, by law, to completely and accurately complete the prior authorizations which they submit. Not every medical provider can submit a PA to the MA program to request reimbursement. Only those providers who have been certified to provide MA-reimbursable services are allowed to submit a PA. One of the reasons these medical providers are "certified" is to assure they are kept up to date on changes in the MA program and the prior authorization process. MA-certified providers are expected to know the rules and policies controlling the prior authorization process and the completion of the prior authorization forms.

I therefore must conclude that the DHCAA was correct in its denial of the PA amendment request. As in all PAs, the petitioner bears the burden of proving the services she requests are necessary, and that has not been done. Her PCW provider may be able to file another PA request explaining more fully the need for the hours, if her April surgery requires it. I suggest that the petitioner, her PCW provider, and the medical specialists she sees review her PCW needs and that they provide increased documentation to support a new request for PCW time. This is not intended to diminish the challenges petitioner faces, 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 the PCW hours for petitioner pursuant to her PA amendment request.

**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 3rd day of May, 2016

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\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 May 3, 2016.

Division of Health Care Access and Accountability