



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA- 173870

PRELIMINARY RECITALS

Pursuant to a petition filed April 21, 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, a hearing was held on January 13, 2016, at Milwaukee, Wisconsin. The record was held open for 5 days for submission of additional information which was received.

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.

The hearing appearances were as follows:

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 [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 August 13, 2015 seeking 112 units of personal care worker (PCW) services per week, 2 medication management visits per day, and 12 skilled nursing visits to use as needed and travel time of an hour per day. These services were requested for 52

weeks commencing October 1, 2015 and ending September 30, 2016. The PA was returned 2 times for additional information.

3. This August 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. The denial date was March 23, 2016.
4. Petitioner has had PCW services approved the prior authorization process in the past; perhaps as far back as 2006 but certainly from October of 2013 through September 2015.
5. Petitioner is 51 years of age (DOB [REDACTED]). The PA request form indicates that his diagnoses are insulin dependent diabetes and paranoid schizophrenia. He lives in the community with his spouse. He weighed 456 pounds at a December 28, 2015 medical appointment; this was after a 50 pound weight loss. He has knee problems. He is deathly afraid of needles so cannot perform his own diabetic cares.

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. It also notes that records submitted for the prior authorization request indicate that Petitioner had been doing well – he lost 50 pounds and was reported to be attending diabetic classes. He is not seen by a psychiatrist.

Petitioner, his wife and a nurse from the provider all testified. Their testimony was that Petitioner needs help with bathing, grooming, skin care, and lower body dressing. They contend that Petitioner's weight and diabetes prevent him from standing, that he gets dizzy and that he cannot reach his lower extremities.

Further, Petitioner testified that he gets sleeping from anti-psychotic meds and needs help with cooking as he falls asleep and leaves the stove on.

I am not approving the personal care request for this case. This request dates back to August 2015. It had to be returned for additional information and was not finally denied until March 23, 2016. At this point a new PA should be filed. The Division of Hearings and Appeals cannot approve the requested services out for 52 weeks at this point. Petitioner's health needs should be reassessed. The Department is correct that there is a lack of medical documentation as to why Petitioner needs help with his ADLs. He may not be quick with them but that alone does not permit approval of a personal care worker. Further, while Petitioner uses a cane he is not using any other adaptive equipment; e.g., a shower chair, a long handled scrub brush and the like.

There are confusing aspects to this case. No appeal was filed for a month after the denial. It is not clear where Petitioner is getting antipsychotic meds if he is not followed by a mental health professional. It is not clear how he has managed to survive his diabetes if he has not had care since September 2015. While evidence offered on his behalf is that that his diabetes has regressed this is not backed up with diabetic records – glucose measurements and insulin dosages. It is not backed up with weight measurement since the December 2015 physician visit.

Nonetheless, if Petitioner has not had his diabetes controlled this does need to be addressed. I am, therefore, approving the medication management visits and any related travel by the provider through September 30, 2016, the original end of the period covered by the prior authorization request. This should permit Petitioner to get immediate help with his diabetes and generate records as to glucose levels and insulin dosages and permit care and/or assessment for any other diabetic issues until a new overall assessment and possible new prior authorization can be filed.

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) 289-6660

TTY/TDD/Relay: 711

Email: InfoMilwDRC@milwcnty.com

Office Location:

1220 W. Vliet Street, Suite 300

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 2 medication management visits and the related travel may be paid for by Medicaid for a limited period of time.

THEREFORE, it is

ORDERED

That Petitioner's provider is authorized to bill the Wisconsin Medicaid program for 2 medication management visits and the related travel from the date of this Decision to September 30, 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, **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 13th day of July, 2016

\s _____
David 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 July 13, 2016.

Division of Health Care Access and Accountability