



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MPA - 174070

PRELIMINARY RECITALS

On May 3, 2016, the above petitioner filed a hearing request under Wis. Stat. §49.45(5), and Wis. Admin. Code §HA 3.03(1), to challenge a decision by the Division of Health Care Access and Accountability (the agency) regarding Medical Assistance (MA). The hearing was held on May 26, 2016, by telephone. The record was held open 21 days to allow petitioner time to submit additional information and for the agency to review and comment on that new information, however no new documentation was submitted for review.

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

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: written submittal of [REDACTED] Nurse Consultant
Division of Health Care Access and Accountability
PO Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Racine County. He is 66 and per his doctor's letter of April 20, 2016 his diagnoses include left shoulder pain, hyperlipidemia, hypertension, CAD, obesity, sleep apnea, lipoma of flank, gout, irreducible umbilical hernia, rib pain on right side, S/P CABG, BPH, noncompliance, DJD of left shoulder, GERD , otalgia of both ears and diabetes.
2. On March 17, 2016 the petitioner's PCW provider, Optimum Home Health Care, submitted a PA for petitioner to receive PCW services in the amount of 7 hours per week, to start March 16, 2016.
3. On April 13, 2016 the agency issued a notice of denial for the PCW services 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 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 agency denied the PA in this case as it determined that the documentation submitted with 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. While there seems no dispute that petitioner has a variety of diagnoses, the PA does not show what his deficits are with respect to his upper extremities, range of motion, strength or mobility. His past clinical notes do not provide this information. The medical information submitted does not show petitioner having the limitations identified during the Personal Care Screening Tool process. In reviewing the information submitted by the provider, I can therefore see how the agency was unable to determine that the PCW services were medically necessary.

The petitioner was at the hearing and testified to his limitations due to pain and weakness. However, as stated above, the PA fails to show this through his medical documentation to the level needed to justify PCW services. And while I do not doubt petitioner has limitations, they must be identified and verified so that petitioner's condition is clear to the agency and based on the orders of his physician as required under MA rules. I therefore must conclude that the agency was correct in its denial of the PA request. As in all PAs, the petitioner bears the burden of proving the services he requests are necessary, and that has not been done. His PCW provider may be able to file an amendment to the PA, or submit a new one, correcting the problems and explaining more fully the need for the hours. I suggest that the petitioner, his PCW provider, and the medical specialists he sees review his PCW needs and that they provide increased documentation to support a new request for PCW time. He may also contact his county's Aging and Disability Resource Center (ADRC) to explore alternative home care options such as supportive home care services. 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 agency correctly denied the PCW hours for petitioner pursuant to his PA 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, **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 _____ day of July, 2016

\s _____
Kelly 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 July 15, 2016.

Division of Health Care Access and Accountability