



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MPA - 174368

PRELIMINARY RECITALS

Pursuant to a petition filed on May 11, 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 regarding Medical Assistance (MA), a hearing was held on September 13, 2016, by telephone.

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.

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 submission of [REDACTED] RN
Division of Health Care Access and Accountability
PO Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Sheboygan County.
2. A prior authorization (PA) request was filed on behalf of Petitioner on or about February 15, 2016. It sought 91 units per week (with a unit = 15 minutes this is 22.5 hours per week) of personal care worker (PCW) services for 53 weeks as well as 96 units (24 hrs) for the year to be used as needed.

3. The February 15, 2016 prior authorization request was denied and Petitioner notified by letter dated March 31, 2016. The appeal deadline was May 15, 2016 and this appeal was timely filed on May 11, 2016.
4. Petitioner has had PCW services since 2008 but this was the first PCW request reviewed by Department nursing staff.
5. Petitioner is 77 years of age (DOB 1/01/1939). The PA notes her diagnosis as age related osteoporosis, unspecified osteoarthritis, low potassium and high blood pressure. She is noted to have functional limits in endurance and ambulation. She does use a cane. She is forgetful. She lives with a son and daughter-in-law. The daughter-in-law has been the caregiver.

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 denying the request for personal care services. It need not be reproduced here. As I understood it, it essentially argues that the medical documentation does not demonstrate that Petitioner requires the assistance requested.

Testimony from Petitioner and her family essentially was that Petitioner needs assistance with bathing, dressing, grooming, toileting, mobility and medications. The prior authorization request indicates that she needs constant supervision for these activities of daily living.

The Department position is the more persuasive here. The medical records do not demonstrate the degree of functional limitations necessary to justify approving this prior authorization request. A new prior authorization request may be filed at any time. Further, Petitioner may also wish to explore the Family Care program. The place to start for information as to those services is:

ADRC Building
650 Forest Avenue
Sheboygan Falls, WI 53085
The ADRC is located on Bus Route 20
(920) 467-4100
Toll Free: (800) 596-1919

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 not sufficient to reverse a denial of this prior authorization request for personal care worker services.

THEREFORE, it is ORDERED

That 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 30th day of September, 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 September 30, 2016.

Division of Health Care Access and Accountability