



FH
[REDACTED]

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

In the Matter of

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

DECISION
Case #: MPA - 175076

PRELIMINARY RECITALS

Pursuant to a petition filed on May 31, 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 August 10, 2016, by telephone.

The issue for determination is whether the agency properly denied the Petitioner's PA request for private duty nursing services.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

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

;

Respondent:

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

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

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. Petitioner is 33 years old. Her diagnoses include vascular insufficiency, cerebral palsy, microcephaly, seizures and a history of intestinal obstruction. She uses a g-tube for feeding and medications. She has a baclofen pump for managing spasticity. Petitioner lives at home with her family. She attends [REDACTED] adult day service programs 2x/week. She receives PCW assistance of 35 hours/week.
3. On April 20, 2016, the agency received a PA from [REDACTED] requesting private duty nursing (PDN) services for the Petitioner of 15 hours/week. The request is based on a need for skilled nursing to complete assessments, monitor neurologic status for seizure activity and to provide seizure precautions and PRN medications. Seizures occur several times/month.
4. On May 18, 2016, the agency denied the Petitioner's PA request.
5. On May 31, 2016, an appeal was filed on behalf of the Petitioner with the Division of Hearings and Appeals.

DISCUSSION

The DHCAA only reimburses providers for medically necessary and appropriate health care services and equipment listed in Wis. Stat. §§49.46(2) and 49.47(6)(a), as implemented by Wisconsin Administrative Code, Chapter DHS 107. Some services and equipment are covered only if a prior authorization request is submitted and approved by the DHCAA in advance of receiving the service. Private duty nursing (PDN) requires prior authorization. Wis. Admin. Code § DHS 107.12(2).

(1) Covered services.

(a) Private duty nursing is skilled nursing care available for recipients with medical conditions requiring more continuous skilled care than can be provided on a part-time, intermittent basis. Only a recipient who requires 8 or more hours of skilled nursing care and is authorized to receive these services in the home setting may make use of the approved hours outside of that setting during those hours when normal life activities take him or her outside of that setting. Private duty nursing may be provided according to the requirements under ss. DHS 105.16 and 105.19 when the written plan of care specifies the medical necessity for this type of service.

The agency denied the Petitioner's PA request on the grounds that the Petitioner does not require 8 hours of skilled nursing services/day and does not, therefore, meet the criteria for coverage of PDN services. The Petitioner's mother testified on her behalf at the hearing. She did not dispute that the Petitioner does not require 8 hours/day of skilled nursing services. She testified that the Petitioner needs a nurse present when she (the mother) is not present to provide skilled care. She testified that the Petitioner has several grand mal and other smaller seizures/month and frequently stops breathing during those episodes. A nurse is needed to spot a seizure coming on and administer medications. The Petitioner's mother also testified that a nurse can recognize if there is a problem with the Petitioner's baclofen pump. In addition, the Petitioner's mother testified that the Petitioner engages in self-abusive behavior and needs constant supervision to prevent her from doing harm to herself.

Based on the evidence presented, the agency properly determined that the Petitioner does not require 8 hours of skilled nursing services and therefore does not qualify for the requested PDN services.

It appears that the Petitioner's mother may want to consider submitting a new PA requesting Home Health Intermittent Skilled Nursing visits (SNV) under DHS 107.11(2)(a). This allows for visits by a nurse on an intermittent basis for a member that requires less than 8 hours of skilled nursing care/day and

specifies a level of care which a nurse is qualified to provide. Specifically SNV services are allowed as follows:

(a) Skilled nursing services provided in a recipient's home under a plan of care which requires less than 8 hours of skilled nursing care per calendar day and specifies a level of care which the nurse is qualified to provide. These are:

1. Nursing services performed by a registered nurse, or by a licensed practical nurse under the supervision of a registered nurse, according to the written plan of care and accepted standards of medical and nursing practice, in accordance with ch. N 6;
2. Services which, due to the recipient's medical condition, may be only safely and effectively provided by an RN or LPN;
3. Assessments performed only by a registered nurse; and
4. Teaching and training of the recipient, the recipient's family or other caregivers requiring the skills on an RN or LPN.

Again, based on the evidence, I conclude it is undisputed that the Petitioner does not require at least 8 hours/day of skilled nursing services and therefore is not eligible to receive the requested PDN services. Therefore, the agency properly denied the PA request for PDN services. If a PA request is submitted for SNV services, a new determination will be made by the agency and the Petitioner will have new appeal rights if she is not satisfied with that determination.

CONCLUSIONS OF LAW

The agency properly denied the Petitioner's PA request for PDN services.

THEREFORE, it is **ORDERED**

That the Petitioner's 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 26th day of August, 2016

\s _____
Debra Bursinger
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 August 26, 2016.

Division of Health Care Access and Accountability