



FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

MPA/143770

PRELIMINARY RECITALS

Pursuant to a petition filed September 10, 2012, 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 October 31, 2012, at Wausau, Wisconsin.

The issue for determination is whether the Department erred in its denial of the prior authorization request for 14 hours per week of PCW services.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Kelly Townsend, RN (in writing)
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Portage County.

2. Petitioner is a 5-year old boy with cerebral palsy. He lives with his grandmother, [REDACTED].
3. Ms. [REDACTED] is currently able to care for petitioner by bathing, dressing, and feeding him. She has been doing these things for him up to this point.
4. On or around May 25, 2012, Midstate Independent Living submitted a prior authorization request to ForwardHealth seeking approval for personal care worker services for seven days per week – two hours per day (one hour in morning and one hour in evening).
5. The Department denied the request on August 21, 2012.
6. On October 9, 2012 the Department nurse consultant filed a letter explaining the reasons for the denial (exhibit #2).

DISCUSSION

MA coverage of personal care 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). Essentially the medical necessity standard requires a service to be basic and necessary for treatment of an illness, not necessarily the best service possible, and not just for convenience.

To determine the number of PCW hours to authorize the DHCAA uses the Personal Care Screening Tool, a computer program it believes will allow it to consistently determine the number of hours required by each recipient. The screening tool allots a specific amount of time in each area the recipient requires help, which the DHCAA's reviewer can then adjust to account for variables missing from the screening tool's calculations.

The problem with petitioner's case largely stems from the Screening Tool as filled out by the provider. Checking that petitioner is age appropriate for dressing, grooming, and bathing immediately eliminated any PCW time for assistance in those areas.

At hearing, Ms. [REDACTED] stated that, in addition to these tasks, a PCW would assist with feeding and providing medication. The Department's position is that such tasks are the responsibility of any adult who is responsible for any 5-year old. Indeed, at hearing, Ms. [REDACTED] stated that she is able to accomplish all necessary tasks for petitioner but simply would appreciate some help. Unfortunately, a prior authorization for PCW services would require "necessity" of the assistance, not just convenience. Petitioner did not argue that there is necessity. I also cannot find necessity under these facts. I must affirm the Department's denial.

I note that as petitioner gets older it is likely that he will grow and be more difficult to bathe and dress. He also could develop behaviors which make it more difficult for Ms. [REDACTED] to accomplish tasks for petitioner. Should that be the case in the future, it is possible that PCW services will become necessary at a later date.

CONCLUSIONS OF LAW

The Department did not err in its denial of PCW services for petitioner.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Madison,
Wisconsin, this 1st day of November, 2012

John P. Tedesco
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 November 1, 2012.

Division of Health Care Access And Accountability