



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

MPA/144140

PRELIMINARY RECITALS

Pursuant to a petition filed September 28, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Office of the Inspector General ["OIG"] in regard to Medical Assistance, a Hearing was held via telephone on November 13, 2012. At petitioner's request a Hearing scheduled for October 23, 2012 was rescheduled.

The issue for determination is whether OIG was correct to modify P.A. # [REDACTED] by approving 35 hours per week of Personal Care Worker ["PCW"] services instead of the 40.25 hours per week that was requested.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Cindy Zander, RN, BSN, OIG Nurse Consultant [Ms. Zander did not appear at the November 13, 2012 Hearing but submitted a letter dated October 16, 2012 with an attachment (Exhibit #1)]

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

OTHER PERSON PRESENT:

[REDACTED], petitioner's adult son and caregiver

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner (age 66 years) has diagnosis of systemic sclerosis, arthropathy Not Otherwise Specified ["NOS"], and carpal tunnel syndrome; she lives alone; she had a kidney transplant in 2002 which failed and she currently receives dialysis 3 times per week; she uses a cane and has functional limitations in endurance and ambulation. Exhibit #1.
3. Petitioner's provider, Independence First of Milwaukee, Wisconsin, filed P.A. # [REDACTED] dated July 12, 2012 with OIG requesting 161 units (40.25 hours) per week of PCW services at a cost of \$41,598.38. Exhibit #1.
4. OIG modified P.A. # [REDACTED] by approving 140 units (35 hours) per week of PCW services [instead of the 161 units (40.25 hours) per week that was requested]; OIG also approved an additional 96 units (24 hours) of PCW services per year PRN ["Pro Re Nata" or "as needed"]. Exhibit #1.
5. Petitioner's PCW service needs were assessed by a Registered Nurse ["RN"] on June 6, 2012 when a *Personal Care Screening Tool* ["PCST"] was completed; the PCST stated that petitioner needs partial physical assistance for the following tasks: bathing; dress upper body; dress lower body; wrist splint; and, grooming; the PCST stated that petitioner requires physical assistance with mobility, toileting, and transferring; the PCST stated that petitioner feeds herself but requires assistance with set up at meal time; the PCST stated that petitioner is independent with medication, that she does not exhibit behavior that interferes with PCW assistance, and that she does not have medical condition that presents a unique challenge for caregivers. Exhibits #1 & #2.

DISCUSSION

By law, MA pays only for medically necessary and appropriate health care services when provided to currently eligible MA recipients. Wis. Admin. Code § DHS 107.01(1) (May 2009); See also, Wis. Stat. §§ 49.46(2) & 49.47(6)(a) (2009-10). In the case of PCW services, MA pays only for 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. Wis. Admin. Code § DHS 107.112(1)(a) (May 2009). Further, some medically oriented tasks may be covered as PCW services if the PCW has received special training in performing the task. Wis. Admin. Code §§ DHS 107.112(2)(b) & 107.11(2)(b)1. (May 2009).

In addition to the medically oriented tasks allowed for PCW's that have received special training, the only PCW services covered are the following:

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)(b) & (4)(f) (May 2009).

PCW services must be performed according to a written plan of care developed by an RN. The plan must be based on the RN's visit to the recipient's home and must be reviewed by the RN at least every 60 days via a home visit. Wis. Admin. Code §§ DHS 107.112(3)(b) & (c) (May 2009). The OIG based its allotment of PCW hours on the June 6, 2012 PCST and a standard *Personal Care Activity Time Allocation Table*. Exhibit #1 (attachment). Use of the PCST is required. *Wisconsin Medicaid and BadgerCare Update August 2006 No. 2006-71*; and, *Wisconsin Medicaid and BadgerCare Update January 2007 No. 2007-04*. The evidence in the record of this matter is that OIG was correct to approve 35 hours per week of PCW instead of the 40.25 hours per week that was requested.

At the November 13, 2012 Hearing petitioner argued that her condition is getting worse, that she must be assisted in the bathroom, with bathing, and with teeth brushing, that she has had 16 surgeries on her knee, 12 surgeries on her hand, and that she might have to have her leg amputated. However, the evidence in the record of this matter is that sufficient time has been allotted for PCW services. If petitioner's condition worsens she may request a new assessment using the PCST.

CONCLUSIONS OF LAW

For the reasons explained above, OIG was correct to modify P.A. # [REDACTED] by approving 35 hours per week of PCW services instead of the 40.25 hours per week that was requested.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby 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 29th day of November, 2012

\sSean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on November 29, 2012.

Division of Health Care Access And Accountability