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

In the Matter of

[REDACTED]

DECISION

MPA/144410

PRELIMINARY RECITALS

Pursuant to a petition filed October 11, 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 November 29, 2012, at Madison, Wisconsin.

The issue for determination is whether the Department erred in its denial of a prior authorization request (# [REDACTED]) for in-home private duty nursing ("PDN") 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: Cindy Zander, RN, BSN (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 Dane County.

2. Since 2009, petitioner has been receiving private duty nursing services through prior authorization from ForwardHealth.
3. Petitioner's provider, Recover Health of Wisconsin, Inc., submitted a prior authorization request (# [REDACTED]) on or around July 20, 2012 for in-home private duty nursing ("PDN") services.
4. Petitioner has intermittent nursing needs and does not require a skilled nurse for 8 hours or more of service per day. Many of the services included in the PA request can be accomplished by a home health aide or personal care worker.
5. The Department found that petitioner no longer qualified for PDN but granted the request until November 30, 2012 to allow for transition to other services.

DISCUSSION

PDN services are covered by MA under Wis. Adm. Code, § DHS 107.12. Such services may be provided in a home setting when the recipient's medical condition requires more continuous skilled care than can be provided on an intermittent basis. § DHS 107.12(1)(a). PDN services are available only when the person requires at least 8 hours of services daily. *Id.* If the recipient is a child the parents' ability to provide cares are considered in determining authorization for a nurse. § DHS 107.12(4)(c); see also the department's Prior Authorization Guidelines, page 120.002.08. Prior authorization from the DHCAA is required for all PDN services. § DHS 107.12(2)(a). Covered home health services do not include supervision of the recipient's condition when supervision is the only service provided at the time. § DHS 107.11(5)(f).

Petitioner does not require 8 hours of PDN services daily. His mother did not argue that he does. She admitted that his needs are intermittent but stated her opinion that it is impractical to have a nurse come to the home at regular intervals to accomplish nursing duties. She admits that she has not approached the provider to see if that is feasible.

As noted in the DHCAA's case summary, petitioner might be eligible for intermittent home health services, or services less intensive than nursing services such as home health aide services. Petitioner's mother stated that they are already in the process of retaining intermittent nursing care.

CONCLUSIONS OF LAW

The DHCAA correctly denied PDN services because petitioner does not require 8 hours daily nursing care.

NOW, THEREFORE, it is **ORDERED**

That the petition for review 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 13th day of December, 2012

\sJohn 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 December 13, 2012.

Division of Health Care Access And Accountability