



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MPA/144741

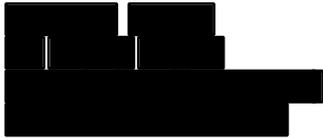
PRELIMINARY RECITALS

Pursuant to a petition filed October 22, 2012, under Wis. Stat., §49.45(5), to review a decision by the Division of Health Care Access and Accountability (DHCAA) to deny Medical Assistance (MA) authorization for personal care worker (PCW) services, a hearing was held on November 20, 2012, by telephone.

The issue for determination is whether petitioner's appeal is timely.

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Written submission of Kelly Townsend, Nurse Consultant

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 15-year-old resident of La Crosse County who receives MA.
2. Petitioner has a number of disabling conditions including cerebral palsy, static encephalopathy, and basal ganglia calcification. She had a spinal fusion in March, 2012. She is fed with a gastrostomy tube.
3. Petitioner has been receiving respite care for one weekend a month at Knapp Development for some time. On July 23, 2012, Knapp requested authorization for PCW services for 4.25 hours per week for 53 weeks, PA no. [REDACTED]

4. When the DHCAA consultant was reviewing the request she discovered that the services were provided during petitioner's monthly respite care time (apparently previous requests made it appear that the services were being performed in petitioner's home). Eventually, by a letter dated August 28, 2012, the DHCAA denied the request because MA cannot cover PCW services outside the home; different funding must be utilized to pay for such services.
5. Petitioner's parents filed this appeal on October 22, 2012.

DISCUSSION

Personal care services are "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). Covered services include 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(b). Notably, respite is not included in the covered services. Furthermore, PCW services must be in the person's home with two exceptions, those being to purchase food and to accompany the recipient to seek diagnosis and treatment. See subsections 11 and 13 above.

An appeal of a negative action concerning MA must be filed within 45 days of the action. Wis. Stat. §49.45(5)(a). Language concerning the right to appeal and the time limit is included on all department notices. In this case the notice sent to petitioner's parents stated "Appeal Date: 10/12/2012" on page one and then provided details of the appeal process on pages 2 and 3. The date of filing is the date the written appeal is received by the agency or the postmark date, whichever is earlier. Adm. Code, §HA 3.05(3)(c).

This appeal thus is untimely because it was postmarked October 22, 2012, ten days after the 45-day appeal date. Furthermore, while I appreciate that the respite services are a great boon to petitioner and her family, the state law makes clear that PCW services are to be provided in the home. Other funding sources must be utilized for respite and the services that accompany respite.

CONCLUSIONS OF LAW

Petitioner's appeal of a denial of PCW services was untimely.

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 26th day of November, 2012

\sBrian C. Schneider
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 26, 2012.

Division of Health Care Access And Accountability