



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

HMO/144058

PRELIMINARY RECITALS

Pursuant to a petition filed September 25, 2012, under Wis. Stat. § 49.45(5)(a), and Wis. Admin. Code § HA 3.03, to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on December 04, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether a prior authorization request for personal care worker services was correctly partially denied.

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: Dr. Donna Davidoff
iCare
1555 N. Rivercenter Drive
Suite 206
Milwaukee, WI 53212

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. A prior authorization request was filed on behalf of Petitioner with her HMO seeking payment for nine units of personal care worker services for Petitioner per day for the period from September 19, 2012 through November 17, 2012.
3. Seven units of PCW services were approved.
4. A unit is equal to 15 minutes.
5. The breakdown of this usage of the nine units requested is not documented.

6. The seven units of PCW services approved breakdown as follows: 30 minutes per day for bathing, 10 minutes per day for dressing the upper body, 10 minutes per day for dressing the lower body, 15 minutes per day for grooming and 10 minutes per day for toileting. This totals 75 minutes. As Petitioner lives alone an additional one third of the total time allocated to the PCW tasks is added to the total. This is 25 minutes and brought total time to 100 minutes. The agency rounded this to 1.75 hours per day or seven units per day.

DISCUSSION

Under the discretion allowed by *Wis. Stat., §49.45(9)*, the Department of Health Services (DHS) requires MA recipients to participate in HMOs. *Wis. Admin. Code, § DHS 104.05(2)(a)*. Medicaid recipients enrolled in HMOs must receive medical services from the HMOs' providers, except for referrals or emergencies. *Wis. Admin. Code, § DHS 104.05(3)*.

The criteria for approval by a managed care program contracted with the DHS are the same as the general Medicaid criteria. See *Wis. Admin. Code, § DHS 104.05(3)* which states that HMO enrollees shall obtain services "paid for by MA" from the HMO's providers. The Department must contract with the HMO concerning the specifics of the plan and coverage. *Wis. Admin. Code, § DHS 104.05(1)*.

If the enrollee disagrees with any aspect of service delivery provided or arranged by the HMO, the recipient may file a grievance with the department or appeal to the Division of Hearings and Appeals.

When determining whether to approve any service, the HMO, as with the Department, must consider the generic prior authorization review criteria listed at *Wis. Admin. Code, § DHS 107.02(3)(e)*. The Medicaid program may only reimburse providers or medically necessary and appropriate health care services and equipment listed in *Wis. Stat. §§ 49.46(2) and 49.47(6)(a)*, as implemented by *Wis. Admin. Code, Ch. DHS 107*. Some services and equipment require submission and approval of a written prior authorization request by the provider. Some services and equipment are never covered.

As with most public assistance benefits the initial burden of demonstrating eligibility for any particular benefit or program at the operational stage falls on the applicant, *Gonwa v. Department of Health and Family Services, 2003 WI App 152, 265 Wis.2d 913, 668 N.W.2d 122 (Ct.App.2003)*. In other words, it is a Petitioner's burden to demonstrate that s/he qualified for the requested services by a preponderance of the evidence. It is not the Department's burden to prove that s/he is not eligible. Further, I note that Medicaid is meant to provide the most basic and necessary health care services at a reasonable cost to a large number of persons and must authorize services according to the Wisconsin Administrative Code.

Petitioner argues that the 30 minutes per day allotted for bathing is not sufficient, that she has incontinent accidents that require changing more frequently than once a day and that she falls if she attempts to change herself. She also notes that she personally pays for supportive home care services such as cleaning, and assistance with meals and laundry out of her own funds.

The department submitted a letter supporting the HMO decision here though in that letter notes that personal cares screening guidelines indicate that bathing includes clothing changes; therefore one of dressing episodes approved could be consolidated with the bathing activity.

I am sustaining the HMO determination here. The provider only requested assistance with toileting (i.e., changing after incontinent episode) at a frequency of once per day. Further, there is an additional 25 minutes per day above the 75 minutes specifically allocated. Petitioner is noted to bath independently so long as someone is present and provides physical assistance for one part of bathing. Thus the evidence does not support more time that allocated by the HMO. Finally, I note that tasks Petitioner pays for with her own funds are supportive home care tasks and were not the subject of this hearing.

CONCLUSIONS OF LAW

That the agency correctly determined that seven units of personal care worker services per day are the appropriate level 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 Milwaukee,
Wisconsin, this 15th day of January, 2013

\sDavid D. Fleming
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 January 15, 2013.

iCare
Division of Health Care Access and Accountability