



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

MPA/145016

PRELIMINARY RECITALS

Pursuant to a petition filed November 02, 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 ["MA"], a Hearing was held via telephone on November 29, 2012.

The issue for determination is whether OIG was correct to modify P.A. # [REDACTED] by approving 33.25 hours (133 units) per week of Personal Care Worker ["PCW"] services instead of the 41.25 hours (165 units) per week that was requested.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED] (not present at November 29, 2012 Hearing)

[REDACTED]

Represented by:

[REDACTED], petitioner's mother & legal guardian

[REDACTED]

Respondent:

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

By: Kelly Townsend, RN, OIG Nurse Consultant (Ms. Townsend did not appear at the November 29, 2012 Hearing but submitted a letter dated November 13, 2012 with attachments)

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

ADMINISTRATIVE LAW JUDGE:
 Sean P. Maloney
 Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dodge County.
2. Petitioner (age 19 years) has diagnosis of Chiari Malformation, Immune Deficiency Disorder, migraine headaches, scoliosis, bi-polar/psychosis with auditory hallucinations, Oppositional Defiant Disorder ["ODD"], Attention Deficit Hyperactivity Disorder ["ADHD"], failure to thrive, posterior tibial tendon dysfunction (surgically repaired in 2010 but petitioner wears foot braces), conductive hearing loss (reduction in ability to hear faint sounds), and speech and language delay; she has functional limitations in ambulation, sight (legally blind), and requires monitoring and cueing; at meals she keeps shoving food into her mouth and will not swallow to the point of a risk of choking; she is a flight risk with a potential to wander.
3. On July 11, 2102 petitioner's provider, Knapps Development, Inc. of Prairie du Chien, Wisconsin, filed P.A. # [REDACTED] dated July 11, 2012 with OIG requesting 41.25 hours (165 units) per week of PCW services and an additional 24 hours (96 units) per year of PCW services PRN ["Pro Re Nata" or "as needed"] at a total cost of \$36,469.13; the requested start date was August 1, 2012.
4. OIG modified P.A. # [REDACTED] by approving 33.25 hours (133 units) per week of PCW services [instead of the 41.25 hours (165 units) per week that was requested]; OIG also approved the 24 hours (96 units) per year of PCW services PRN that was requested; OIG sent a letter to petitioner dated October 11, 2012 and entitled *BadgerCare Plus Notice of Appeal Rights* informing petitioner of this modification.
5. In addition to the PCW hours approved by OIG petitioner receives 100 hours per month of Supportive Home Care ["SHC"] from Dodge County due to her multiple behavioral and psychological diagnoses; 1 day per week petitioner engages in scheduled activities outside of her residence.
6. Petitioner's PCW service needs were assessed by a Registered Nurse ["RN"] on June 27, 2012 when a *Personal Care Screening Tool* ["PCST"] was completed; the PCST states that petitioner needs partial physical assistance for the following tasks: bathing (cueing and assist chair); dress upper body (intermittent supervision or cueing); dress lower body (intermittent supervision or cueing); grooming; mobility (intermittent supervision or cueing); the PCST states that petitioner requires physical assistance with the following: shoe splint and neck brace; eating (feeds self but requires constant supervision and physical intervention to ensure task completion); toileting (needs physical help from another person for incontinence care); transferring; and, medication; the PCST states that petitioner exhibits behavior that interferes with PCW assistance (she bites, kicks, pulls hair, tosses objects, and scratches) and that she has medical condition that presents a unique challenge for caregivers (bipolar and has mood swings).

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 27, 2012 PCST and a standard *Personal Care Activity Time Allocation Table*. 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 33.25 hours per week of PCW instead of the 41.25 hours per week that was requested. It is noted that OIG also approved 24 hours per year of PCW services PRN. It is also noted that in addition to the PCW hours approved by OIG petitioner receives 100 hours per month of SHC.

At the November 29, 2012 Hearing petitioner's mother testified that petitioner is a flight risk, wanders, shovels food into her mouth at a rapid rate, requires adult supervision in the shower, cannot be left alone, and does not sleep through the night. As noted above, 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 (MA does not pay for PCW services for the purpose of general monitoring or general supervision). The evidence in the record of this matter is that sufficient time has been allotted for PCW services. If petitioner's condition changes 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 33.25 hours per week (133 units) of PCW services instead of the 41.25 hours per week (165 units) 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 11th day of January, 2013

\sSean P. Maloney
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 11, 2013.

Division of Health Care Access And Accountability