



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

MPA/145386

PRELIMINARY RECITALS

Pursuant to a petition filed November 19, 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 regards to Medical Assistance, a hearing was held on February 25, 2013, at Chilton, Wisconsin. A hearing set for February 1, 2013, was reset at the petitioner's request.

The issue for determination is whether the DHCAA/OIG correctly modified the petitioner's prior authorization request for Personal Care Worker service hours from 7 hours per week to 3.5 hours per week.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Represented By:

[REDACTED]

Respondent:

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

Written Appearance By: Kelly Townsend, R.N., Nurse Consultant
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a 57 year-old single resident of Calumet County. At the time of the filing of this appeal she resided in a private residence. As of approximately February 1, 2013, she began residing in an assisted living institution to receive cares for ulcerated skin on her legs and feet. Her authorized representative, [REDACTED] indicates that she will return to her home in about another month or so.
2. On or about September 12, 2012, the petitioner's home health care provider, [REDACTED] submitted a prior authorization request to the Department's Division of Health Care Access and Accountability (DHCAA) requesting 7 hours per week of personal care worker services (\$7,049); 5.25 hours per week of travel time for the personal care worker (\$5,286.75); 1 home health aide or certified nurse aide visit per day, 7 days a week (\$35,616); 1 medication administration visit by a skilled nurse every other week with 6 as needed visits (\$4,480); plus 1 visit by a skilled nurse once a month to change a catheter (\$1,680). The total cost of the services sought was \$54,111.75
3. On October 11, 2012, the DHCAA issued a Notice to the petitioner informing her that she had requested MA coverage of all of the services described in Finding of Fact #2, above; that none were denied; and that one, the request for personal care worker services of 7 hours per day was modified.
4. The ultimate modification was to reduce the 7 hours of PCW services requested to 3.5 hours of PCW services per week, based upon the Department's review of the Personal Care Screening Tool (PCST) assessment and the provider's medical documentation. The Department determined that 3.5 hours per week of PCW was the level that was medically necessary to meet the petitioner's needs. None of the other services requested were modified by the Notice or departmental action.
5. The petitioner has the following conditions: full incontinence; depression; asthma; hypertension; post-cardiovascular accident (CVA/stroke); and gastro-esophageal reflux disease (GERD).
6. The petitioner's functional limits are bowel/bladder incontinence; endurance; ambulation.
7. The petitioner uses an electric wheelchair; grab bars; a shower bench; a wheelchair lift; a lift chair; a walker; gait belt; and medi-cassettes. When living alone, she could bathe and shower herself with constant supervision and physical intervention to ensure completion of the tasks. She can dress her upper and lower body with intermittent supervision and cueing. She grooms herself with and without the use of assistive devices. She can feed herself, and she toilets herself without assistance, including providing her own incontinence cares. She is independent in medication administration. She can transfer herself. She eats a general diet. Her home has been adapted to her wheelchair.
8. At the time of the instant PA Request, the petitioner was suffering from redness to her legs and feet and required assistance from a caregiver to apply multiple prescribed medicated creams and wrap Ace bandages around her affected areas.
9. The Department reviewed the clinical documentation and the PCST and concluded that the time necessary, per week, for a personal care worker to meet the petitioner's needs was 70 minutes for brace removal; 70 minutes for skin cares; and 47 minutes for incidental services related. See, Exhibit #1, at p. 5. The Department's Consultant further noted that the Home Health Aide visits that had been approved as requested would be expected to meet all other personal care tasks needed by the petitioner during these visits.
10. On November 19, 2012, the petitioner filed an appeal contesting the DHCAA modification of her requested PCW service hours from 7 per week to 3.5 hours per week.

11. On or about February 1, 2012, the petitioner developed serious ulcerations on her feet and was moved to an assisted living institutional setting for treatment and rehabilitation. It is presently estimated by her brother that she will be discharged about April 1, 2013, to return to her community. She is currently receiving cares in the institutional setting.

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).

Personal care workers can spend no more than one-third of their time performing housekeeping activities. Like all medical assistance services, PCW services must be medically necessary and cost effective. Wis. Admin. Code, §DHS 107.02(3)(e)1 and 3.

The petitioner’s provider certainly has asserted that more than mere application of medicated cream and dressing of same was occurring in the morning and evening during the PCW visits. See, Exhibit #2, at p. 19 (“Section IV Orders”). It is asserted that assistance with dressing, transferring, toileting and medication administration is occurring. In addition, the basis for the modification is indeed suspect in light of the subsequent worsening of the petitioner’s legs and feet and ulceration, and transfer to an assisted living situation to help her deal with her condition. But the simple fact is that *now* the petitioner’s medical condition has significantly changed given the present new living arrangement that has lasted for about a month, and is expected to continue for at least another month. The cares she is receiving in that setting are not established by her representative. Her exact condition is not established by her representative. And the duration in this setting is not established other than a vague layman’s assertion that she will be moved back home in a month or so.

The evidence presented in this changed circumstance does not establish that the PCW services are medically necessary under the current situation, at the requested 7 hours per week level. Under these facts, the instant appeal must be dismissed. Nothing in this decision prevents the petitioner from asking her provider to re-assess her present needs in an amendment request to the DHCAA; or she may seek a complete re-assessment of her new conditions as part of a plan to transition back to home in anticipation of her discharge back to her home in the near future.

CONCLUSIONS OF LAW

That the petitioner has not established by the preponderance of the record that the requested 7 hours per week of PCW services are medically necessary under her current living circumstances, care regimen, and medical conditions, all of which have significantly changed since the initial PA Request.

THEREFORE, it is

ORDERED

That the petition for review herein be, and the same hereby 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 Madison,
Wisconsin, this 27th day of February, 2013

\sKenneth D. Duren, Assistant Administrator
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 February 27, 2013.

Division of Health Care Access And Accountability