



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████ ██████
██████████████
████████████████████

DECISION

MPA/146940

PRELIMINARY RECITALS

Pursuant to a petition filed January 24, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of ██████ Care Access and Accountability in regard to Medical Assistance, a hearing was scheduled for March 5, 2013. Following two requests to reschedule this matter, a telephone hearing was ultimately held on May 15, 2013.

The issue for determination is whether the respondent erred when it denied personal care worker (PCW) services for petitioner.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

██████ ██████
██████████████
████████████████████

Respondent:

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

By: Kelly Townsend, RN

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

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County. He resides independently with a roommate.

2. The petitioner's diagnoses include, but are not limited to pancreatic disease, nonspecified arthropathy, and extrinsic asthma. Exhibit 2.
3. A Personal Care Services Tool (PCST) was completed by a nurse from [REDACTED] [REDACTED] [REDACTED] on November 8, 2012, to determine the petitioner's PCW needs. Exhibit 3.
4. The PCST indicated that the petitioner needs physical assistance with bathing, upper and lower body dressing, grooming, meals, mobility in the home, and toileting (transfers). Exhibit 2.
5. On or around November 22, 2010, the petitioner's provider, [REDACTED] [REDACTED] [REDACTED] [REDACTED], requested prior authorization (no. 5123140185) for MA coverage of 168 units (42 hours) of personal care worker services (PCWS) per week plus 24 units (6 hours) for acute care needs, PRN, based on the PCST it had completed. Travel time of 28 units (7 hours) and daily skilled nursing visits were also requested. Exhibit 2.
6. On January 17, 2013, respondent notified petitioner of its denial of Prior Authorization no. 5123140185. Exhibit 3.

DISCUSSION

Personal care worker service (PCW), as defined at Wis. Admin. Code §DHS 107.112(1), is an MA-covered service. Wis. Admin. Code §DHS 107.112(2). In determining whether to approve such a service request, the Division employs the generic prior authorization criteria found at §DHS 107.02(3)(e). Those criteria include the requirements that a service be a medical necessity, appropriate, and an effective use of available services. *Id.* The Division argues that the authorization criteria have not been satisfied as the petitioner's provider has not substantiated the medical necessity of the cares it is requesting. Petitioner's provider did not participate in the hearing.

The petitioner contends that he needs all of the requested care time, as verified by the PCST prepared by his provider. He testified that he has difficulties with bathing and dressing, as well as with medication administration due to weakness, numbness and illiteracy.

The state code does restrict MA-covered PCW tasks as follows:

(b) Covered personal care services are:

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(2)(b).

This is a denial of eligibility for services; it is not discontinuation of services. As with any eligibility denial, the burden is on petitioner to show that he is eligible for the requested services. *Lavine v. Milne*, 424 U.S. 577, 583-584 (1976). Petitioner has failed to do so.

Respondent argued,

Following initial review of the documentation submitted this consultant had concerns regarding the validity of the PCST as it so significantly conflicted with the documentation of 3 other clinicians within the previous 24 hours that the PCST was competed. This consultant returned the PA to [REDACTED] [REDACTED] [REDACTED] [REDACTED] on 11/19/12, requesting clarification regarding [petitioner's] self-feeding capabilities, behaviors and requesting a therapy evaluation.

Exhibit 2. Petitioner's provider did not provide any additional documentation which would have supported the medical necessity of PCW or skilled nursing services in the home. The medical records did demonstrate that petitioner was seeking treatment for pain, but there was no correlation to the need for home care services. Petitioner has testified that no therapy evaluation was completed to his knowledge. I must concur with the respondent that the petitioner's provider failed to establish the medical necessity of the personal care worker/skilled nursing services.

I further note that petitioner's testimony pertaining to numbness, neuropathy, and weakness is not corroborated by the medical records submitted with the PA request, and as such cannot be substantiated. This was a close case; petitioner is encouraged to discuss these issues with his providers, and to also pursue the therapy evaluation proposed by the respondent, in the event that he should seek to submit a new prior authorization.

CONCLUSIONS OF LAW

The DHCAA correctly denied PA no. 5123140185 as petitioner has failed to establish the medical necessity of the services requested.

THEREFORE, it is

ORDERED

That the petition 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 1st day of July, 2013.

\sPeter McCombs
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 July 1, 2013.

Division of [REDACTED] Care Access And Accountability