



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/147063

PRELIMINARY RECITALS

Pursuant to a petition filed January 31, 2013, 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 March 12, 2013.

The issue for determination is whether OIG was correct to deny P.A. # [REDACTED] which requested Prior Authorization ["PA"] for: (1) 28 hours (112 units) per week of Personal Care Worker ["PCW"] services; (2) 24 hours (96 units) per week of PCW services on an as needed ["Pro Re Nata" or "PRN"] basis; and also; (3) 7 hours (28 units) per week of PCW travel time.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Sharon Bailey, RN, BSN, OIG Nurse Consultant
Kelly Townsend, OIG Nurse Consultant
Office of the Inspector General
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]; age 36 years) is a resident of Milwaukee County.
2. Petitioner suffered a spinal cord injury in a motor vehicle accident on September 22, 2002 and is paraplegic; he also experiences pain in his right elbow as a result of a recent fall. Exhibit #1.
3. On October 31, 2012 petitioner's provider, Grace Personal Care Services of Milwaukee, Wisconsin, filed P.A. # [REDACTED] dated October 31, 2012 with OIG requesting: (1) 28 hours (112 units) per week of PCW services; (2) 24 hours (96 units) per week of PCW services on a PRN basis; and also; (3) 7 hours (28 units) per week of PCW travel time; with a total cost of \$37,580.00 and a requested start date was October 6, 2012.
4. OIG denied P.A. # [REDACTED] for the requested PCW hours; OIG sent a letter to petitioner dated January 26, 2013 and entitled *BadgerCare Plus Notice of Appeal Rights* informing petitioner of this denial.
5. In July 2011 a Physical Therapy ["PT"] evaluation of petitioner was conducted which concluded that petitioner is "independent performing all ADL's" (including dressing; eating; grooming/hygiene toileting; bathing; transfers), that he was continent, and that his upper extremity gross overall strength was normal. Exhibit #1 (attachment #8).
6. In July 2011 a provider request PA for a wheelchair for petitioner; in the *Prior Authorization/Durable Medical Equipment Attachment (PA/DMEA)* dated July 18, 2011 the provider stated that petitioner "is independent in all ADL's . . ." Exhibit #1 (attachment #8).
7. Petitioner's PCW service needs were assessed by a Registered Nurse ["RN"] on August 9, 2012 when a *Personal Care Screening Tool* ["PCST"] was completed; the PCST states that petitioner needs partial physical assistance for the following tasks: bathing; dress upper body; dress lower body; grooming; the PCST states that petitioner requires physical assistance with the following: ted stockings; grooming (set-up); mobility; toileting; and transferring; the PCST states petitioner has rare medical condition (paraplegia) that presents a unique challenge for caregivers and is expected to result in a long-term need for extra time; the PCST concluded that petitioner needs 28 hours (112 units) per week of PCW services and 24 hours (96 units) of PCW services on a PRN basis. Exhibit #1 (attachment #2).
8. Petitioner's PCW service needs were assessed a second time on October 31, 2012 by the same RN who did the August 9, 2012 assessment; a second PCST was completed; that second PCST states that petitioner needs partial physical assistance for the following tasks: bathing; dress upper body; dress lower body; the second PCST states that petitioner requires physical assistance with the following: ted stockings; grooming (set-up); mobility; toileting; and transferring; the second PCST states petitioner does not have a rare medical condition that presents a unique challenge for caregivers and is expected to result in a long-term need for extra time; the second PCST concluded that petitioner needs 25 hours (100 units) per week of PCW services and 24 hours (96 units) of PCW services on a PRN basis.

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) (2011-12). 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).

The evidence in the record of this matter is mixed at best. It is clear that petitioner does not need the 28 hours per week of PCW services that was originally requested since the second PCST¹ (conducted by the same RN who conducted the first PCST) concludes that he needs only 25 hours (100 units) per week. How many PCW hours petitioner does need, if any, is not certain. The July 2011 PT evaluation and PA attachment suggest that he needs none. There is nothing in the record of this matter to explain why petitioner's functioning would have dramatically decreased since July 2011 as claimed by petitioner (although he now has pain in his right elbow due to a recent fall). Nevertheless, both the 1st PCST and the 2nd PCST suggest that he needs at least some PCW hours. Further, petitioner testified that he is incontinent at times and that he cannot transfer by himself. On the other hand, petitioner also testified that he is assisted by his brother, sister, uncle, and cousins. Thus, at least some of the tasks with which petitioner claims to need assistance may not require the services of a PCW because petitioner could be assisted, instead, by a family member. Finally, petitioner testified that his PCW is also his roommate and lives with him. Therefore, it is not understood why PCW travel time was requested.

Petitioner may, if he wishes, have his provider file a new PA request taking all of the above factors into account.

¹ 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.

CONCLUSIONS OF LAW

For the reasons explained above, OIG was correct to deny P.A. # [REDACTED] which requested PA for: (1) 28 hours (112 units) per week of PCW services; (2) 24 hours (96 units) per week of PCW services on a PRN basis; and also; (3) 7 hours (28 units) per week of PCW travel time.

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 8th day of April, 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 April 8, 2013.

Division of Health Care Access And Accountability