



FH

[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/147237

PRELIMINARY RECITALS

Pursuant to a petition filed February 08, 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 April 09, 2013.

The issue for determination is whether OIG was correct to deny Prior Authorization [“PA”] # [REDACTED] for Pediatric Community Care Services [“PCC”] for petitioner (up to 10 hours per day 5 days per week starting December 3, 2012).

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED] [REDACTED] (not present at April 9,
2013 Hearing)
[REDACTED]
[REDACTED]
[REDACTED]

Represented by:

[REDACTED] [REDACTED], petitioner’s mother
[REDACTED]
[REDACTED]

Respondent:

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

By: Cindy Zander, RN, BSN, Nurse Consultant [Ms. Zander did not appear at
the April 9, 2013 Hearing but submitted a letter dated March 22, 2013 with
attachments (Exhibit #1)]

Office of the Inspector General
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

OTHER PERSONS PRESENT:

Shannon Guibord, RN, Associate Director, Milwaukee Center for Independence
Linda Zajork, RN, Clinical Nursing Supervisor, Milwaukee Center for Independence

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

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner (age 2 years & 7 months) has diagnosis of seizure disorder with multiple congenital abnormalities, DiGeorge Syndrome, congenital heart defect, history of cleft palate with repair, dysphagia, Failure To Thrive ["FTT"], GERD, GJ tube placement, kyphosis and torticollis, developmental delay, central hypotonia, and microcephaly; petitioner's weight as of November 14, 2012 was 9.67 kilograms.
3. Petitioner's provider, Milwaukee Center for Independence of Milwaukee, Wisconsin, filed PA # [REDACTED] dated December 3, 2012 with OIG requesting Pediatric Community Care Services ["PCC"] for petitioner up to 10 hours per day 5 days per week starting December 3, 2012 at a total cost of \$260,000.00. Exhibit #1.
4. OIG denied PA # [REDACTED] for PCC for petitioner; OIG sent a letter to petitioner dated December 26, 2012 and entitled *BadgerCare Plus Notice of Appeal Rights* informing petitioner of this modification.
5. The PCC requested by petitioner is skilled nursing care to be provided outside of his home (it is child care with skilled nursing and specialized staff). Exhibit #1[Attachment #1].
6. Petitioner's physician's order states that a nurse is to perform a full assessment every shift and as needed [to include blood pressure, weight (weekly), oxygen saturation (daily), hydration and nutritional (estimate 40 minutes every 8 hours), safety, and prevention of infection, bowel and bladder patterns]; time estimates are those provided by petitioner.
7. Petitioner's physician's order also states: assess cardiac (estimate 20 minutes every 8 hours); GU assessment (estimate 10 minutes every 8 hours); Urine check; GI assessment (estimate 30 minutes every 8 hours); pain assessment (daily); skin assessment; complete respiratory assessment and suctioning as needed (estimate 15 minutes every 8 hours); and, neurological assessment (estimate 15 minutes every 8 hours); time estimates are those provided by petitioner.
8. Petitioner requires medication management (estimate 20 minutes every 8 hours); passive Range of Motion ["ROM"] (estimate 30 minutes every 8 hours); time estimates are those provided by petitioner.

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). PCC is child care, provided outside of petitioner's home, with skilled nursing and specialized staff. PCC is services provided in a day care setting for children, ages 0-20, with complex medical needs who reside at home and require at least 8 hours per calendar day of skilled nursing care. Exhibit #1[Attachment #1: *Wisconsin Medicaid Pediatric Community care (PCC) Services*].¹ Only a recipient who requires 8 or more hours of skilled nursing care and is authorized to receive those services in the home setting may make use of the approved hours outside of that setting. Wis. Admin. Code § DHS 107.12(1)(a) (May 2009).

"Skilled nursing services' means those professional nursing services furnished pursuant to a physician's orders which require the skills of a registered nurse or licensed practical nurse and which are provided either directly by or under the supervision of the registered nurse or licensed practical nurse.

Note: Examples of services which would qualify as skilled nursing services are:

- (a) Intravenous, intramuscular, or subcutaneous injections and hypodermoclysis or intravenous feeding;
- (b) Levin tube and gastrostomy feedings;
- (c) Nasopharyngeal and tracheotomy aspiration;
- (d) Insertion and sterile irrigation and replacement of catheters;
- (e) Application of dressings involving prescription medications and aseptic techniques;
- (f) Treatment of extensive decubitus ulcers or other widespread skin disorder;
- (g) Heat treatments which have been specifically ordered by a physician as part of active treatment and which require observation by nurses to adequately evaluate the patient's progress;
- (h) Initial phases of a regimen involving administration of medical gases; and
- (i) Rehabilitation nursing procedures, including the related teachings and adaptive aspects of nursing that are part of active treatment, e.g., the institution and supervision of bowel and bladder training programs."

Wis. Admin. Code § DHS 101.03(163) (December 2008).

Based on the evidence in the record of this matter it cannot be concluded that petitioner requires at least 8 hours per calendar day of skilled nursing care. Even if the time estimates provided by petitioner are taken as correct many of the tasks that are necessary for petitioner do not require the skills of a Registered Nurse ["RN"] or a Licensed Practical Nurse ["LPN"]. Only medically necessary time spent in direct care that requires the skills of an RN or LPN can be counted toward the 8 hour requirement. Wis. Admin. Code § DHS 107.12(1)(f) (May 2009). Thus, as OIG points out (Exhibit #1(page 6), simply monitoring petitioner for problems cannot count toward the 8 hour requirement. Likewise, initiating and stopping G-tube feeding may count, but not monitoring while the feeding is taking place. Further, medication management (except for G-tube administration) and Range of Motion ["ROM"] do not require the skills of an RN or LPN (although petitioner argues that ROM requires such skills "due to underlying medical condition" there is nothing in the record of this matter to show that that is the case). Petitioner's oral and nasal suctioning does not require the skills of an RN or LPN.

Petitioner argues that he has surgeries scheduled in June 2013 and in August 2013 and will require additional skilled care after those surgeries. If that is the case petitioner should have his provider file a new PA request with additional documentation.

CONCLUSIONS OF LAW

For the reasons explained above, OIG was correct to deny P.A. # [REDACTED] for Pediatric Community Services for petitioner (up to 10 hours per day 5 days per week starting December 3, 2012).

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 16th 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 16, 2013.

Division of Health Care Access And Accountability

ⁱ PCC is provided outside a recipient's home in a licensed day care center that is certified by Wisconsin MA to provide these services. Exhibit #1[Attachment #1: *Wisconsin Medicaid Pediatric Community care (PCC) Services*].