



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

HMO/147566

PRELIMINARY RECITALS

Pursuant to a petition filed February 22, 2013, under Wis. Stat. § 49.45(5)(a), and Wis. Admin. Code § HA 3.03, to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a telephone hearing was held on May 01, 2013.

The issue for determination is whether the agency properly reduced the Petitioner's personal care worker (PCW) hours from 24.5 hours/week to 19.5 hour/week.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Lucy Miller, Nurse Consultant
Division of Health Care Access And Accountability
Madison, WI

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County who receives MA. He is in the Managed Health Services (MHS) HMO.
2. On or about November 20, 2012, MHS received a "request of medical services" for personal care worker (PCW) services on petitioner's behalf in the amount of 24.5 hours per week for a six month period. See, Exhibit 2, att. 3.

3. On November 27, 2012, MHS modified petitioner's requested PCW hours from 24.5 to 19.5.
4. Petitioner appealed the modification, and a nurse consultant with the Office of the Inspector General reviewed the case. On March 12, 2013, she affirmed the denial. Exhibit 2, att. 4.
5. Petitioner timely filed an appeal with the Division of Hearings and Appeal on February 22, 2013.

DISCUSSION

Under the discretion allowed by Wis. Stat., § 49.45(9), the Department requires some MA recipients to participate in HMOs. Wis. Admin. Code §DHS 104.05(2)(a). MA recipients enrolled in HMOs must receive medical services from the HMO's providers, except for referrals or emergencies. Wis. Admin. Code §DHS 104.05(3). Just as with regular MA, the recipient can appeal a denial or modification of services to the Division of Hearings and Appeals.

The criteria for approval by a managed care program contracted with the respondent are the same as the general MA criteria. See, Wis. Admin. Code, §DHS 104.05(3), which states that HMO enrollees shall obtain services "paid for by MA" from the HMO's providers. This means that the MA program may only reimburse providers for medically necessary and appropriate health care services and equipment listed in Wis. Stat. §§ 49.46(2) and 49.47(6)(a), as implemented by Wis. Admin. Code, Chapter DHS 107. A service is medically necessary if it is "[r]equired to prevent, identify or treat a recipient's illness, injury or disability..."

The respondent proffered testimony and documents at hearing attesting to the rationale behind the modification of PCW services as requested by the petitioner. Respondent noted that the 5 hour weekly reduction in PCW services was specific to toileting. The respondent maintains that the petitioner is able to toilet himself independently, and cites the November 27, 2012, MHS conclusion that "...there was more independence in toileting and transfers." See, Exhibit 2, att. 3. However, the Personal Care Screening Tool (PCST) completed by Independence First contradicts this conclusion.

At hearing petitioner testified that his medications interfere with his ability to attend to toileting. He noted that some days he is able to do everything independently, but when he takes his medications he is practically incapacitated. It is then that he needs assistance with such things as transfers from the toilet. When questioned directly by this Administrative Law Judge regarding how such medication-induced incapacity would be conveyed by the PCST, the respondent's representative indicated that nothing in the PCST addresses the impact of petitioner's medication.

As such, and based on the entirety of the record before me, I conclude that the respondent has failed to establish that it correctly modified petitioner's request for PCW services. The petitioner's medications clearly affect his ability to transfer, and the respondent's representative noted that this was apparently not considered when the modification decision was approved. The MHS modification letter is also lacking in any comment on the issue and does not substantiate its finding that petitioner has exhibited more independence in toileting and transfers.

I note to the petitioner that his provider will not receive a copy of this decision. In order to have the PCW services approved, the petitioner must provide a copy of this decision to his provider, Independence First. The provider must then submit a new request for medical services to MHS to receive the approved coverage.

CONCLUSIONS OF LAW

Respondent has not established that it correctly reduced petitioner's requested PCW hours from 24.5 to 19.5, weekly.

THEREFORE, it is

ORDERED

That the petitioner's provider is hereby authorized to provide the petitioner with 24.5 PCW hours weekly for the six month period as requested, and to submit its claim, along with a copy of this Decision and a new request for medical services, to MHS (HMO) for payment.

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 17th day of May, 2013

\s\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 May 17, 2013.

Division of Health Care Access And Accountability



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