



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MPA/148215

PRELIMINARY RECITALS

Pursuant to a petition filed March 21, 2013, 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, now known as the Office of the Inspector General (OIG), in regard to Medical Assistance (MA), a hearing was held on June 20, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the OIG correctly determined the number of personal care worker (PCW) hours for petitioner pursuant to her prior authorization (PA) request.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:

Attorney Patricia DeLessio
230 West Wells Street Room 800
Milwaukee, WI 53203

Respondent:

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

By: written submittal of Kelly Townsend, 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:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County. She is 44 years old and certified for MA.

2. Petitioner lives alone and does not regularly attend activities outside of her home. She is diagnosed with malaise and fatigue, chronic airway obstruction, and shortness of breath.
3. On January 8, 2013 a Personal Care Screening Tool (PCST) was conducted by a nurse from Independence First (IF) for petitioner. The amount of time allocated under the PCST was 44 units (11 hours) per week. That PCST showed that:
 - a. She requires partial assistance with bathing once daily.
 - b. She requires partial assistance with dressing her lower body once daily, and supervision or cueing for dressing her upper body once daily.
 - c. She requires partial assistance with grooming twice daily.
 - d. She feeds herself.
 - e. For mobility its states that she is able to move about by herself but requires intermittent supervision or cueing, and that she requires stand by assistance (SBA) when ambulating with cane to provide support due to her unsteady gait and potential fall risk.
 - f. She was found to toilet herself or provide her own incontinence care but requires presence of another intermittently for supervision or cueing.
 - g. For transfers, it states that she can transfer herself but requires intermittent supervision or cueing, and that she requires arm in arm assistance with all transfers to provide support due to her unsteady gait and potential fall risk.
 - h. For medication management, petitioner was found independent.
 - i. No behaviors or medical conditions were noted as interfering with the PCW's assistance with cares.
 - j. The IF also requested additional time for services incidental to task and time for skin cares and nebulizer treatments.
4. On February 4, 2013, IF requested prior authorization on petitioner's behalf for 22.75 hours/91 units per week of PCW services and 28 units/7 hours per week of PCW travel time (PA # [REDACTED]) to begin April 2, 2013.
5. By a notice dated March 11, 2013, the OIG modified the requested hours for PCW services and granted 14 hours/56 units of PCW services, 96 PRN units/24 hours annually, and 28 units/7 hours per week of PCW travel time.

DISCUSSION

MA coverage of PCW services is described in the Wis. Adm. Code, §DHS 107.112. Covered services are specified in subsection (1), and are defined generally as "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." Examples of covered services are assistance with bathing, with getting in and out of bed, with mobility and ambulating, with dressing and undressing, and meal preparation. In determining the number of PCW hours to authorize the OIG uses that standard along with the general medical necessity standard found at Wis. Adm. Code, §DHS 101.03(96m). It provides:

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;

2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
3. Is appropriate with regard to generally accepted standards of medical practice;
4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
6. Is not duplicative with respect to other services being provided to the recipient;
7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code, §DHS 101.03(96m).

To determine the number of PCW hours to authorize the OIG uses the Personal Care Screening Tool, a computer program it believes will allow it to consistently determine the number of hours required by each recipient. The screening tool allots a specific amount of time in each area the recipient requires help, which the OIG's reviewer can then adjust to account for variables missing from the screening tool's calculations.

The OIG allowed the maximum time allowed for bathing, dressing the lower body, and grooming. Her skin care time was doubled and she was allowed time for services incidental to task. Petitioner contested the time allowed for toileting, bathing, dressing the lower body, mobility and transferring. For toileting petitioner requests assist twice daily for assistance with transferring on/off and adjusting clothing. Her RN Care Coordinator testified to petitioner's difficulty with this task in that her shortness of breath, obesity, chronic pain and difficulty bending all affect her ability to complete the task safely. Petitioner also provided at hearing a statement from her doctor indicating that she is treated for more than the PCST may have provided. Specifically, he states that she also suffers from COPD, hypoxemia, OSA, DJD spine, and lower back pain. See Exhibit 4. Based on all the evidence at hearing, I will allocate an additional 10 minutes daily for toileting.

I add here that some of the tasks for which petitioner requests PCW services were affected under the PCST because of cross screen validation issues with a Long Term Care Functional Screen (LTCFS) completed in July 2012. The PCST results in Finding of Fact #3 for items e. f. and g. therefore contain conflicting information. The direct testimony at hearing was that petitioner's abilities have worsened over time and that by the time the PCST was completed in January 2013 petitioner was not as independent as the LTCFS would have her appear. Petitioner described that she rarely drives, but when she does she requires assistance with getting in and out of her vehicle. That activity was not assessed for the PCST as it is not a PCW service, but petitioner described that her ability to get around has worsened at least in part due to a slipped disc in her back causing leg pain. Those cross screen issues were explained in the PCST Addendum as well.

Petitioner also requested more time for mobility. Petitioner's RN Care Coordinator testified that petitioner requires standby assistance with mobility when using her cane to walk about her home. She requested that petitioner be considered at a "level D" because she has an unsteady gait and is a fall risk. However, according to the testimony from petitioner her caregivers may follow behind her to ensure her safety, but there is no evidence to show that the caregiver provides hands-on assistance with mobility, which would have her assessed at a D. The evidence rather shows that she was correctly assessed at "B"

as she is able to move about by herself but requires intermittent supervision or cueing. No additional time is supported by the evidence for this task.

As for transfers, petitioner was assessed as needing assistance with transfers again due to her unsteady gait and for being a fall risk. She was assessed as needing an arm in arm assist to complete the activity safely. Accordingly, I am allocating 30 minutes daily for this task.

As for bathing, petitioner is also requesting more time because of her pain issues and due to her size. Petitioner is self-described as 370 pounds and that due her size she requires extra time to wash and dry her body. Accordingly, I will allow an additional 15 minutes for this task.

As for dressing the lower body, petitioner admitted to guessing at the additional time requested thinking it took 15 minutes to complete the task in the AM and PM. PCST assistance for that task was only listed as needed in the AM. However, based on the entirety of the evidence at hearing, including her pain and obesity, I am allocating an additional 10 minutes daily for that task.

All of this results in a total additional allocation of 55 minutes daily (385 minutes weekly, or 6.41 hours weekly). With a 25% addition for tasks incidental to the services there is an additional 13.75 daily minutes (96.25 minutes weekly/1.6 hours weekly), and thus the total time allocated is 481.25 minutes weekly, or an additional 8 hours weekly, or 32 units weekly.

If petitioner still needs additional PCW time beyond that granted here, her provider may file an amendment to the prior authorization request correcting the problems and explaining more fully the need for the hours.

Finally, I note for Petitioner that her provider will not receive a copy of this Decision. In order to have the personal care services involved here approved, the Petitioner must provide a copy of this Decision to Independence First. The provider must then submit a new prior authorization request to receive the approved coverage.

CONCLUSIONS OF LAW

That the evidence offered on behalf of Petitioner is sufficient to demonstrate she requires an additional 32 units of PCW services per week.

THEREFORE, it is

ORDERED

That Petitioner's provider may re-submit a PA request for 32 units/week beginning April 2, 2013 of PCW services and its invoice, along with a copy of this decision, to ForwardHealth for payment and ForwardHealth is directed to make payment accordingly.

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 Milwaukee,
Wisconsin, this 2nd day of July, 2013

\sKelly Cochrane
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 2, 2013.

Division of Health Care Access And Accountability
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