



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

DECISION

MPA/148245

PRELIMINARY RECITALS

Pursuant to a petition filed March 22, 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 23, 2013.

The issue for determination is whether OIG was correct to modify P.A. # [Redacted] which requested Prior Authorization ["PA"] for: (1) 61.25 hours (245 units) per week of Personal Care Worker ["PCW"] services; and, (2) 14 hours (56 units) per week of PCW travel time. OIG modified the PA request by granting: (A) 48.3 hours (193.2 units) per week of PCW services; and, (2) 24 hours (96 units) per year of PCW services on an as needed ["Pro Re Nata" or "PRN"] basis.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted] (not present at April 23, 2013 Hearing)
c/o [Redacted]
[Redacted]
[Redacted]

Represented by:

[Redacted], petitioner's mother & legal guardian
[Redacted]
[Redacted]

Respondent:

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

By: Kelly Townsend, RN, Nurse Consultant, OIG
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

OTHER PERSONS PRESENT:

██████████, petitioner's brother
 ██████████, RN, Personal Care Coordinator, Community Living Alliance

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
 Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ██████████; age 35 years) is a resident of Dane County.
2. Petitioner has ectodermal dysphasia, osteopenia, scoliosis, autism, pericarditis, and profound mental retardation; he is legally blind, has seizures, and has severe behaviors (when he becomes frustrated he destroys furniture, rips *Depends*, smears feces, and is physically aggressive); he can ambulate independently but will not move unless physically led from task to task; he requires constant supervision.
3. On January 22, 2013 petitioner's provider, Dane County Department of Human Services of Madison, Wisconsin, filed P.A. # ██████████ dated January 22, 2013 with OIG requesting: (1) 61.25 hours (245 units) per week of PCW services; and, (2) 14 hours (56 units) per week of PCW travel time; for a duration of 53 weeks with a total cost of \$64,131.06.
4. OIG modified P.A. # ██████████ by granting: (A) 48.3 hours (193.2 units) per week of PCW services; and, (2) 24 hours (96 units) per year of PCW services on an as needed basis; OIG sent a letter to petitioner dated February 22, 2013 and entitled *BadgerCare Plus Notice of Appeal Rights* informing petitioner of the modification.
5. Petitioner lives with his family and participates 5 days per week (9:00 a.m. to 3:00 p.m.; Monday thru Friday) in a regularly scheduled work activity outside of his residence.
7. Petitioner's PCW service needs were assessed by a Registered Nurse ["RN"] on January 2, 2013 when a *Personal Care Screening Tool* ["PCST"] was completed; the PCST states that petitioner needs total assistance for the following tasks: bathing; dress upper body; dress lower body; grooming; feeding; the PCST states that petitioner requires physical assistance with the following: mobility (needs constant presence of another); toileting (incontinence care); the PCST states petitioner is able to transfer himself but requires the presence of another person; the PCST states that petitioner has behaviors that interfere with services and require services to consume more time (including striking-out during cares, violence with people and pets, destroying property, smearing feces); the PCST calls for 48 hours (180 units) per week of PCW services and 0 hours (zero) 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).

PCW services must be performed according to a written plan of care developed by an RN. The plan must be based on the RN's visit to the recipient's home and must be reviewed by the RN at least every 60 days via a home visit. Wis. Admin. Code §§ DHS 107.112(3)(b) & (c) (May 2009). The OIG based its allotment of PCW hours on the January 2, 2013 PCST and a standard *Personal Care Activity Time Allocation Table*. Use of the PCST is required. See, *Wisconsin Medicaid and BadgerCare Update* August 2006 No. 2006-71; and, *Wisconsin Medicaid and BadgerCare Update* January 2007 No. 2007-04. There is no doubt that petitioner requires extensive PCW services and is difficult to care for. However, the evidence in the record of this matter is that OIG was correct to approve 48.3 hours per week of PCW instead of the 61.25 hours per week that was requested. First, the PCST calls for 48 hours per week of PCW services. Second, OIG approved an additional 24 hours per year of PCW services PRN that were not called for by the PCST. Third, *Personal Care Activity Time Allocation Table* supports the 48.3 hours per week approved by OIG. Based on the *Personal Care Activity Time Allocation Table* petitioner is receiving the maximum amount of PCW services per week in the following categories: bathing; dressing upper body; dressing lower body; grooming; and, toileting. Fourth, general supervision is not a covered PCW service. See, Wis. Admin. Code §§ DHS 107.112(1)(b) & (4)(f) (May 2009). Finally, fifth, in addition to the PCW hours approved by OIG petitioner is out of the home for 30 hours per week (9:00 a.m. to 3:00 p.m.; Monday thru Friday) in a regularly scheduled work activity.

At the April 23, 2013 Hearing there was testimony that all of petitioner's care can not be accomplished in 48.3 hours per week, that petitioner needs more care as he gets older, and that the family is using respite care time to provide personal cares to petitioner. However, the testimony at the Hearing was not supported by documentation that specifically quantifies the PCW cares petitioner requires. Based on the evidence in the record of this matter, as outlined above, it must be concluded that OIG is correct.

CONCLUSIONS OF LAW

For the reasons explained above, OIG was correct to modify P.A. # [REDACTED] by granting: (A) 48.3 hours (193.2 units) per week of PCW services; and, (2) 24 hours (96 units) per year of PCW services on an as needed basis.

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 17th day of May, 2013

\sSean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on May 17, 2013.

Division of Health Care Access And Accountability