



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/148597

PRELIMINARY RECITALS

Pursuant to a petition filed April 9, 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 (DHCAA or Division) in regard to Medical Assistance (MA), a hearing was held on June 27, 2013, by telephone. A hearing set for May 15, 2013, was rescheduled at the petitioner's request.

The issue for determination is whether the Division correctly denied a prior authorization request for pediatric community care services (PCC) for the petitioner.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

By: [REDACTED], mother

[REDACTED]
[REDACTED]

Respondent:

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

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

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County. He is certified for MA.

2. The petitioner was receiving PCC prior to February 2013. On January 17, 2013, a prior authorization request (#...228) for PCC was submitted on the petitioner's behalf. Service was requested at the level of 72 hours weekly, beginning January 26, 2013, at a cost of \$374,400. The Division issued written notice of denial of the request on February 25, 2013.
3. PCC services were prior authorized for the petitioner (PA#...027) for 13 weeks from October 15, 2012, with instructions from DHCAA to transition to an alternate level of care. There are four home health service care levels paid for by Wisconsin MA: Private Duty Nursing (PDN), Home Health Intermittent Skilled Nursing visits (SN), Home Health Aide, and Personal Care Worker (PCW). The most intense of these, PDN, is for medical conditions requiring continuous skilled care, and is for "a recipient who requires 8 or more hours of skilled nursing care." PCC services are medical services provided in a daycare setting to a child with complex medical needs who resides at home and qualifies for PDN services (*i.e.*, needs 8 hours of skilled nursing care daily).
4. The petitioner, age 4, resides at home with his mother and siblings. He was born prematurely, and has diagnoses of pulmonary hypertension, esophageal reflux, developmental delay, and chronic lung disease. He has a history of seizures, constipation, congenital diaphragmatic hernia (repaired), hydrocephalus (treated with shunt placement), tachycardia, and failure to thrive. No seizure activity has occurred since the spring of 2012. His last hospitalization was in January 2012. He has functional limitations in the areas of eating, speech, bowel/bladder function, and ambulation. He has a history of displacing his g-tube (most recently, two months ago), and a history of vomiting his g-tube formula. However, the documented number of incidents of such vomiting has been decreasing. His weight in December 2012 was 15.3 kg (33.7 pounds, which is the 29th percentile for a 4-year old).
5. Care needed for the petitioner includes performing suctioning for 20 minutes every eight hours, a nursing assessment every eight hours, bolus g-tube feeding five times daily, and medication administration. He receives the medication Pulmicort via nebulizer once every 12 hours, and his mother is capable of performing this task. He has occasional episodes of vomiting related to his feedings. His oxygen saturation number is to be obtained once every eight hours, per the physician portion of the authorization request. There is no documentation of recent seizure activity. The petitioner receives speech, physical, and occupational therapy at least weekly. He does not have a physician order in place for continuous or supplemental oxygen therapy, and does not use a CPAP machine. No evidence was presented of a tracheotomy, catheterization, decubitus ulcers, or a need for application of dressings or heat treatments.
6. Although the petitioner needs services from a home health aide and/or Home Health Intermittent Skilled Nursing, he does not require PDN services (8 hours daily).

DISCUSSION

The DHCAA only reimburses 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 Wisconsin Administrative Code, Chapter DHS 107. Some services and equipment are covered only if a prior authorization request is submitted and approved by the DHCAA in advance of receiving the service. PCC requires prior authorization.

PCC services are medical services provided in a day care setting for children with complex medical needs who reside at home and require at least eight hours per day of skilled nursing care, as defined in the Wisconsin Administrative Code, §DHS 107.12. §DHS 107.12(1)(a) provides: "Only a recipient who requires 8 or more hours of skilled nursing care and is authorized to receive these services in the home setting may make use of the approved hours outside of that setting during those hours when normal life activities take him or her outside of that setting."

MA skilled nursing services are in turn defined in state code as follows:

(163) "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).

The DHCAA determined that the requested PCC services in this case are not covered by the MA program per Wis. Admin. Code §DHS 107.02(3)(e). The Division concluded that the clinical documentation submitted by the provider did not prove that the petitioner required at least 8 hours per day of skilled nursing services, which is the care threshold for the approval of such private duty nursing services. *See*, Wis. Admin. Code §§DHS 107.12, 107.11(2)(a).

The petitioner does have significant care needs. He requires g-tube feedings, 20 minutes per feeding, five times daily. This is a nursing task. Although monitoring of g-tube feeding is typically a task below the skill level of a nurse, I am persuaded that the petitioner's propensity for vomiting and displacement of his tube justifies some supervision time by a nurse. However, all of the time needed to set up, perform, and monitor the immediate aftermath of the feedings performed by a nurse *does not add up to 8 hours daily*. The petitioner's other care tasks can be handled by a person less skilled than a nurse, e.g., supervision/monitoring for potential problems. The petitioner's representative may wish to talk to his provider about receiving Intermittent Skilled Nursing or Home Health Aide services at home.

CONCLUSIONS OF LAW

1. The DHCAA correctly denied the prior authorization request for the petitioner's PCC services beginning January 26, 2013.

THEREFORE, it is

ORDERED

That the petition is 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 2nd day of July, 2013

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Wayne J. Wiedenhoef, Acting Administrator
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 July 2, 2013.

Division of Health Care Access And Accountability