



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
c/o [REDACTED] & [REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/148959

PRELIMINARY RECITALS

Pursuant to a petition filed April 25, 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 [“DCHAA”] in regard to Medical Assistance [“MA”], a Hearing was held via telephone on June 04, 2013.

The issue for determination is DCHAA was correct to modify Prior Authorization [“PA”] # [REDACTED] for Personal Care Worker [“PCW”] services for petitioner by granting 51.25 hours per week instead of the 56 hours per week that was requested.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED] [REDACTED] (not present at June 4,
2013 Hearing)
c/o [REDACTED] & [REDACTED]
[REDACTED]
[REDACTED]

Represented by:

[REDACTED] & [REDACTED], petitioner’s
parents
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Kelly Townsend, RN, Nurse Consultant
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

OTHER PERSON PRESENT:

██████████, RN, Care Coordinator, Independence First

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (21-years-old) is a resident of Milwaukee County.
2. Petitioner a diagnosis of unspecified quadriplegic, unspecified idiopathic peripheral neuropathy, and unspecified urinary incontinence. Exhibit #1 [page 4; attachment #2 (page 2); attachment #2 (page 3)]
3. On February 7, 2013 petitioner's provider, Independence First of Milwaukee, Wisconsin, filed P.A. # ██████████ dated February 7, 2013 with DCHAA requesting: (1) 56 hours (224 units) per week of PCW services; and, (2) 24 hours (96 units) per year PRN ["Pro Re Nata" or "as needed"] for a duration of 53 weeks with a total cost of \$58,344.00. Exhibit #1 [page 1; attachment #1]
4. DCHAA modified P.A. # ██████████ by granting: (1) 51.25 hours (205 units) per week of PCW services; and, (2) 24 hours (96 units) per year PRN; DCHAA sent a letter to petitioner dated April 11, 2013 and entitled *BadgerCare Plus Notice of Appeal Rights* informing petitioner of the modification. Exhibit #1 [page 6; attachment #5 (page 4)]
5. DCHAA allocated no additional PCW time for mobility because it claims that "multiple pieces of documentation indicate that [petitioner] is independent in operating his power wheelchair." Exhibit #1 (page 5; #6).
6. Petitioner's PCW service needs were assessed by a Registered Nurse ["RN"] on February 4, 2013 when a *Personal Care Screening Tool* ["PCST"] was completed; the PCST states that petitioner "has limited control of his electric wheelchair and depends on his caregiver for assistance to monitor controls. He usually uses an adaptive wheelchair propelled by a caregiver." Exhibit #1 [attachment #3 (page 3)]
7. Petitioner's *Home Health Certification and Plan of Care* dated March 2012 (for the time period May 20, 2012 to May 19, 2013) states: "Customer has an electric wheelchair, however, due to inconsistent control in his arms/hands/fingers he has difficulty controlling it independently at this time." Exhibit #1 [attachment #4 (page 2)]
8. The *ForwardHealth Personal Care Addendum* in this matter, dated January 4, 2013, states: "Customer has an electric wheelchair, however, due to inconsistent/spastic movements of his arms/hands/fingers he has difficulty controlling it independently at this time. He uses his manual wheelchair that is propelled by family." Exhibit #1 [attachment #5 (page 3)]
9. Petitioner lives with his family and attends school 5 days per week (8:00 a.m. to 2:00 p.m.; Monday thru Friday). Exhibit #1 [page 1; attachment #5 (page 4)]
10. Petitioner's *Individualized Education Plan* ["IEP"] (meeting date October 4, 2012) states: "[Petitioner's] driving skills are quite functional throughout his school environment (in the building) and progressing toward independence in the community. [Petitioner] is able to drive himself to each classroom. He is able to drive in a crowded hallway; he slows down his speed and drives with caution. He is able to negotiate getting on and off the elevator, but continues to need assist pressing the floor buttons. He benefits from having 1-2 additional minutes to travel between classes." The IEP also states: "[Petitioner] has made steady progress with his wheelchair mobility skills; he drives

his wheelchair 100% of the time while at school. He is able to drive himself from room to room as long as the hall is crowd free and he is within eye view of staff. He is able to drive through doors without bumping into them 3 of 5 opportunities, although he has many close calls. He tends to drive on the left side of the hall; even with continual verbal cues to drive with the flow of traffic. Staff should walk by his side when halls are crowded; at times he needs assistance driving around peers. He continues to need verbal and visual cues to avoid bumping into objects. When moving in tight places, like a classroom, he is often guided into positions to avoid bumping into items.” Exhibit #1 [attachment #9 (pages 3 & 22)]

11. Petitioner’s home environment has much tighter spaces, and much less room to maneuver, then his school environment; petitioner cannot drive his wheelchair at home the way he does at school and must be assisted.

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).

Petitioner’s parents, and his RN Care Coordinator testified credibly that petitioner needs the full 56 hours per week requested (instead of the 51.25 hours per week that was approved)¹ because he must be assisted with mobility at home. As detailed in the above *Findings of Fact*, their testimony is supported by the documentation that is part of the record of this matter. DCHAA’s assertion that “multiple pieces of

¹ This amounts to an about an additional 36½ minutes per day.

documentation indicate that [petitioner] is independent in operating his power wheelchair” is not supported by the documentation that is part of the record of this matter. Therefore, 56 hours per week must be approved.

It is noted to petitioner that his provider will not receive a copy of this *Decision*. In order to have the PCW hours approved, petitioner must provide a copy of this *Decision* to Independence First of Milwaukee, Wisconsin. Independence First of Milwaukee, Wisconsin must then submit a *new* Prior Authorization request to receive the approved coverage.

CONCLUSIONS OF LAW

For the reasons explained above, DCHAA was not correct to modify PA # [REDACTED] for PCW services for petitioner by granting 51.25 hours per week instead of the 56 hours per week that was requested.

NOW, THEREFORE, it is

ORDERED

That this matter be REMANDED to DCHAA and that DCHAA approve PA for the PCW hours requested in PA # [REDACTED]; in order to obtain the PCW hours petitioner must have Independence First of Milwaukee, Wisconsin submit a claim and new Prior Authorization [“PA”] request, together with a copy of this *Decision*, to ForwardHealth 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 14th day of June, 2013

\s\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 June 14, 2013.

Division of Health Care Access And Accountability



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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