



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/149227

PRELIMINARY RECITALS

Pursuant to a petition filed May 4, 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 (Division or DHCAA) in regard to Medical Assistance (MA), a hearing was held on June 19, 2013, by telephone.

The issue for determination is whether the Division correctly determined, pursuant to a prior authorization request, that the petitioner requires 8 hours weekly of personal care worker (PCW) services.

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 written submission of Cindy Zander, RN
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. On March 8, 2013, a prior authorization request (#... [REDACTED]) was submitted on the petitioner's behalf for 14 hours weekly of PCW services, beginning March 25, 2013. On April 8, 2013, the Division issued written notice that it was "modifying" the amendment request by approving a decreased amount of PCW time of 8 hours weekly.
3. The Division's basis for service reduction was that the number of requested hours was not medically necessary. In particular, the Division concluded that MA could not pay for time for upper body dressing and grooming, because the petitioner has adequate use of his hands.
4. The petitioner, age 57, resides alone in the community. His primary personal care worker is a non-relative. The petitioner has diagnoses of osteoarthritis, leg muscle spasm, arthritis in both feet and knees, respiratory abnormality, sleep apnea, controlled diabetes, anxiety disorder and asthma. He has a history of falls, and has functional limitations in the areas of endurance and shortness of breath with exertion. He is 5'7" tall, and weighs 270 pounds.

A state Personal Care Screening Tool (PCST) review was performed by a nurse for the petitioner on February 8, 2013. The PCST results declared that the petitioner required PCW time totaling **12.5** hours weekly, and needed constant supervision with bathing daily, upper and lower body dressing once daily, grooming twice daily, and skin care. He also requires meal preparation services and medication (12 items) set-up services, and uses a CPAP machine. The petitioner is not resistive during caregiving. He is independent with eating, toileting, mobility (uses a cane), and transfers.
5. The petitioner concedes that he can perform his own grooming. He also does not contest the PCST determination that he requires no time to help with his eating, mobility, toileting, or transfers. The petitioner requires 10 minutes daily for lower body dressing in the morning (which was incorrectly rolled into the 30 minutes of allotted bathing time). The additional lower dressing time adds 70 minutes weekly to the 8 hour total advanced by the Department. A supportive home care worker takes the petitioner shopping and to medical appointments.

DISCUSSION

Personal care worker service (PCW), as defined at Wis. Admin. Code §DHS 107.112(1), is an MA-covered service, subject to prior authorization after the first 250 hours per calendar year. Wis. Admin. Code §DHS 107.112(2) (May 2009). In determining whether to approve such a service request, the Division employs the generic prior authorization criteria found at §DHS 107.02(3)(e). Those criteria include the requirements that a service be a medical necessity, appropriate, and an effective use of available services. *Id.* The Division argues that the authorization criteria have not been satisfied for the reason given in Finding #3 above.

The Department asserts that it has reduced the PCW time to the amount it believes is necessary to perform purely PCW tasks. The petitioner contends that he needs all of the requested care time.

The state code does restrict MA-covered PCW tasks as follows:

(b) Covered personal care services are:

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(2)(b).

Through hearing testimony from the petitioner and his unrelated personal care worker, the petitioner established that he requires an additional 70 minutes weekly for lower extremity dressing time. The addition of this 70 minutes to the 350 weekly minutes for personal care time, brings his total ADL time for the week up to 420 minutes (7 hours) weekly.

The Division's policy standard is to add no more than 33% of the ADL time for a person living alone to the authorization or services incidental to ADLs. In this case, that would allow addition of 140 minutes (2.5 hours) weekly to the total. Thus, I will be increasing the petitioner's PCW time for the period to **9.5** hours (7.0 + 2.5).

[Note to Petitioner: Your provider will not receive a copy of this Decision. In order to have the service requested here, you must provide a copy of this Decision to [REDACTED] [REDACTED]. The provider must then submit a new prior authorization request to receive the approved service.]

CONCLUSIONS OF LAW

1. The petitioner requires 9.5 PCW hours weekly for the current authorization period.

THEREFORE, it is

ORDERED

That [REDACTED] [REDACTED] is hereby authorized to provide the petitioner with 9.5 PCW hours weekly for the period beginning March 25, 2013, and to submit its claim, along with a copy of this Decision and a new prior authorization request, to ForwardHealth for payment. In all other respects, 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 28th day of June, 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 June 28, 2013.

Division of Health Care Access And Accountability