



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/149398

PRELIMINARY RECITALS

Pursuant to a petition filed May 14, 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), a hearing was held on June 25, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the OIG correctly modified 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:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By written submittal of: Sharon Bailey, 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:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. She is 60 years old and certified for MA.

2. Petitioner lives with her family and regularly attends activities outside of her home three times per week for dialysis. She is diagnosed with CVA with left-sided weakness, diabetes, and impaired vision.
3. On February 28, 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 111 units (27.75 hours) per week. That PCST showed that:
 - a. For bathing, she is unable to effectively participate in bathing and is totally bathed by another person once daily.
 - b. She depends entirely on another person to dress her lower body once daily, and requires partial assistance with dressing her upper body once daily.
 - c. She requires assistance with application and removal of a right lower leg prosthesis.
 - d. She requires partial assistance with grooming once daily.
 - e. She feeds herself but requires intermittent supervision or cueing.
 - f. For mobility it states that she ambulates with prosthesis and assist of one on non-dialysis days and uses a wheelchair with assistance on dialysis days.
 - g. She needs physical help from another person for toileting/incontinence care 4 times daily.
 - h. For transfers, she needs help from another person but can participate.
 - i. For medication management, petitioner was found to need the physical help of another twice daily as she needs bottles open and reminders. Time was also requested for the medically oriented tasks (MOTs) of glucometer readings three times daily.
 - j. No behaviors or rare medical conditions were noted as interfering with the PCW's assistance with cares.
 - k. IF also requested additional time for services incidental to task.
4. On March 18, 2013, IF requested prior authorization on petitioner's behalf for 31.5 hours/126 units per week of PCW services and 7 hours/28 units per week of PCW travel time (PA # [REDACTED]) to begin May 17, 2013.
5. On April 17, 2013 the OIG modified the original requested hours for PCW services and granted 26.25 hours/105 units of PCW services only. No PCW travel time was allowed as petitioner's PCW lives with her.

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 modified the PA after its review of the PA and its supporting documents. The explanation for the time allowed was set forth in its summary statement prepared for the instant hearing. See Exhibit 3. The petitioner was represented at hearing in large part by her daughter/caregiver who clearly wants the best for her mother. She stated that her mother requires extra time for grooming, dressing and bathing. She described her mother as obese, blind, depressed, limited in her use of her left arm (and she is left-handed), numbness in her fingers, and in pain at her hips and with the use of the prosthesis. She described the pain with the use of the prosthesis as causing her mother to no longer ambulate and is using a wheelchair for all mobility, and that this has gone on for approximately the last two months. She also stated that her mother requires total assist for transfers due to pain now as well. The evidence is unclear as to the amount of specific times needed for each task and what assistance is provided.

In reviewing the information submitted by the provider, I can see how the OIG was unable to determine that all of the requested PCW services were medically necessary, and technically I am reviewing the OIG's determination. Further, what appears to have happened here is that petitioner had a change in her conditions, after the PA was submitted, resulting from the pain she experiences with the prosthesis. I suggest that the petitioner, her provider(s), and the medical specialists she sees review her PCW needs and that they provide increased documentation to support a new or amended request for additional ongoing PCW time. Pro Re Nata (PRN) time may be requested as well if her conditions/abilities change frequently. I have the option of ordering hours per week here, but I would be totally guessing, as it is not clear to me what is needed. Furthermore, even if I ordered more hours, petitioner's family would have to fight this battle again the next time that prior authorization would be requested, since the OIG still would be looking at the Screening Tool as it was drafted.

I therefore must conclude that the OIG was correct in its modification of the PA. As in all prior authorization request cases, the petitioner bears the burden of proving the services she requests are necessary, and that has not been done. As stated above, IF may file an amendment to the PA request correcting the problems and explaining more fully the need for the hours pursuant to the changes in conditions. An estimated time schedule provided by petitioner's daughter could help in showing the OIG

the hours needed, what specific ADLs require assistance, what specific assistance is provided, and what limitations petitioner experiences that require assistance. This is not intended to diminish the challenges petitioner and her family face, but rather to explain that the documentation and specificity of cares must be there to support the requested services.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The OIG correctly modified petitioner's request for PCW hours as the preponderance of the evidence submitted did not show the medical necessity of the services.

THEREFORE, it is

ORDERED

That the petition for review herein be 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 Milwaukee,
Wisconsin, this 23rd 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 23, 2013.

Division of Health Care Access And Accountability