



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/149521

PRELIMINARY RECITALS

Pursuant to a petition filed May 15, 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), in regard to Medical Assistance (MA), a telephonic hearing was held on July 02, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the OIG correctly determined the number of personal care worker (PCW) hours for petitioner pursuant to a prior authorization (PA) request.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: written submittal of Kelly Townsend, 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:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County. He is 56 years old and certified for MA.

2. Petitioner lives with family and does not regularly attend activities outside of the home. He is diagnosed with paraplegia in the lower extremities and lower portion of the trunk and with depressive disorder.
3. On February 13, 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 132 units (33 hours) per week. That PCST showed that:
 - a. For bathing, he requires partial physical assistance of another.
 - b. He depends entirely on another person to dress his lower body, and requires partial assistance with dressing his upper body.
 - c. He requires assistance with placement of anti-embolism hose (TEDS).
 - d. He requires partial assistance with grooming.
 - e. He feeds himself.
 - f. For mobility its states that he requires the physical help of another to move his manual wheelchair due to decreased strength in his upper body and overall poor endurance.
 - g. He needs physical help from another person for toileting/incontinence care 6 times daily.
 - h. For transfers, he needs help from another person but can participate.
 - i. For medication management, petitioner was found to need the reminders twice daily. Time was also requested for the medically oriented tasks (MOTs) of complex positioning 4 times daily, suppository insertion twice per week, range of motion (ROM) twice daily, and set up and cleaning of self-catheterization equipment four 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 15, 2013, IF requested prior authorization on petitioner's behalf for 49 hours/196 units per week of PCW services and 7 hours/28 units per week of PCW travel time (PA # [REDACTED]) to begin May 14, 2013.
5. On April 16, 2013 the OIG modified the original requested hours for PCW services and granted 39.25 hours/157 units of PCW services weekly, 96 units/24 hours of Pro Re Nata (PRN) per year, and 7 hours/28 units per week of PCW travel time.

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 1. The petitioner represented himself at the hearing. Ultimately, he was unable to provide any evidence to show that the time awarded should somehow be changed. Rather, what he testified to was that he really wanted assistance to get out of his home. Unfortunately for petitioner, this hearing was to determine PCW hours, and personal cares are only provided in the home. Petitioner may want to check into the IRIS program which does provide services for community inclusion. Petitioner can contact the Milwaukee County Aging and Disability Resource Center (ADRC) at [REDACTED] or 1-[REDACTED] to discuss all of his options. Other information about IRIS can be found online at <http://www.dhs.wisconsin.gov/bdds/IRIS/index.htm>.

In reviewing the information submitted by the provider, I can see how the OIG was unable to determine that all of the requested PCW hours were medically necessary, and technically I am reviewing the OIG's determination. I 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 he 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. An estimated time schedule provided 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 his 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 determined the number of personal care worker (PCW) hours for petitioner pursuant to a prior authorization (PA) request.

THEREFORE, it is

ORDERED

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 26th day of July, 2013

\sKelly Cochrane
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 26, 2013.

Division of Health Care Access And Accountability