



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION

MPA/149940

PRELIMINARY RECITALS

Pursuant to a petition filed June 12, 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 in regard to Medical Assistance, a hearing was held on July 23, 2013, at Ellsworth, Wisconsin.

The issue for determination is whether the Office of Inspector General correctly determined the number of personal care worker hours the petitioner requires throughout the request period.

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: Robert Derindinger, R.N.
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Pierce County.

2. On March 7, 2013, the petitioner with Spring Valley Home Health Service requested 49 hours of personal care worker services per week for 53 weeks along with 24 hours to be used as needed throughout the year. The request included seven hours a week for travel by the workers. The total cost of the services was \$66,768. The Office of Inspector General modified the request on June 5, 2013, allowing 34.5 hours per week and 24 hours as needed throughout the school year.
3. The petitioner is 15-year-old boy diagnosed with Dandy-Walker Syndrome (a congenital brain malformation that results in cerebellar dysfunction, unsteadiness, and lack of muscle coordination), cerebral palsy, and gastroesophageal reflux with aspiration.
4. The petitioner receives speech and language, physical, and occupational therapy through his school district. When he is not in school, he does therapies and exercises recommended by his school district.
5. The petitioner's request was for personal care from 9:00 a.m. to 4:00 p.m. on Saturday and all days in which he was not in school.
6. The Wisconsin Department of Public Instruction requires that school be held at least 180 days per year. Wis. Admin. Code, § PI 8.01(2)(f)1.
7. The agency Office of Inspector General allowed the following care each week for the petitioner:
 - a. Bathing: 180 minutes
 - b. Dressing assistance: 120 minutes
 - c. Applying leg braces: 60 minutes
 - d. Grooming: 180 minutes
 - e. Eating assistance: 360 minutes
 - f. Toileting assistance: 240 minutes
 - g. Incontinence cares: 90 minutes
 - h. Transfers: 180 minutes
 - i. Range of Motion exercises: 120 minutes
 - j. Services incidental to tasks: 413 minutes

DISCUSSION

Personal care services are “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). Covered services include 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).

The regulations bar any service not included in the above list. Wis. Admin. Code, § DHS 107.112(4)(f). The list of covered services does not include travel. In addition, Wis. Admin. Code, § DHS 107.112(4)(h) specifically bars reimbursement for “therapy services.” Personal care workers can spend no more than one-third of their time performing housekeeping activities. Wis. Admin. Code, § DHS 107.112(3)(e). Like all medical assistance services, personal care worker services must be medically necessary and cost effective. Wis. Adm. Code § DHS 107.02(3)(e)1 and 3.

The petitioner is a severely disabled 15-year-old boy. He requested 49 hours of personal care worker services per week for 53 weeks along with another 24 hours to be used as needed throughout the year. Seven of the weekly hours were requested to reimburse the workers for their travel time. In addition, much of time was to help the petitioner perform the home portion of his speech, occupational, and physical therapy assigned by his school. Specifically, he sought personal care worker services from 9:00 a.m. through 4:00 p.m. each Saturday and any day he was not in school. Excluding travel and per needed time, he sought a total of 2,226 hours of personal care throughout the request period. The total cost of all of the requested services was \$66,768. The Office of Inspector General allowed some time for stretching exercises but denied all other time devoted to his home therapy programs. It also denied time for the workers’ travel and reduced the time devoted to some of his cares. It allowed an average of 34.5 hours each week for the 53-week period of the request.

The petitioner’s mother gave compelling reasons for the therapy. She pointed out that her son had been to a number of private therapists who all eventually gave up on him. Only the school district’s therapists provided help that led to significant progress. It is understandable that she wishes to follow through with the program they set up. Nevertheless, I am required to follow laws and regulations pertaining to medical assistance as they are written, and those laws specifically bar personal care reimbursement for therapy. As noted, they also bar reimbursement for travel time.

There remains some question about the time allotted for some of the petitioner’s care, such as toileting and using the stander or other walking equipment. But there is no need to determine whether there is enough time set aside for his cares because, after considering the days the petitioner is in school, the Office of Inspector General provided more than enough hours to cover all of the care the petitioner seeks. His request stated that he sought care from 9:00 a.m. until 4:00 p.m. on Saturdays and each day he was not in school. This was then presented as seven hours of care a day, six days a week throughout the entire year. But there are 180 school days in a year, which amounts to about half of the days in a year. Because the hours sought are during the hours he would be in school, this means that he only needs the care on Saturdays plus an average of 2 ½ days the rest of the week, or 3 ½ days a week. Multiplying seven by 3.5 gives 24.5 as the average number of hours of care he needs each week. This is 10 hours less than the Office of Inspector General actually allowed. Even if one assumes that he misses school days because of illness or other problems, the overall hours awarded should cover all of his requested needs. Based upon this, I find that the 34.5 hours a week allowed by the Office is reasonable and uphold its decision.

CONCLUSIONS OF LAW

The Office of Inspector General correctly determined the amount of medically necessary personal care worker hours needed by the petitioner.

THEREFORE, it is

ORDERED

The petitioner's appeal 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 4th day of September, 2013

\sMichael D. O'Brien
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 September 4, 2013.

Division of Health Care Access And Accountability