



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION

MPA/150073

PRELIMINARY RECITALS

Pursuant to a petition filed June 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 hearing was held on July 25, 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. She is 43 years old and certified for MA.

2. Petitioner lives with family and does not regularly attend activities outside of the home. She is diagnosed with obesity, attention/concentration deficit, nonspecific schizoaffective disorder, and mental retardation.
3. On March 19, 2013 a Personal Care Screening Tool (PCST) was conducted by Independence First (IF) for petitioner. There appears to be some error in the PCST naming the petitioner as the screener. The amount of time allocated under the PCST was 81 units (20.25 hours) per week. That PCST showed that:
 - a. For bathing, she requires total physical assistance of another.
 - b. She dresses her upper and lower body but requires intermittent supervision or cueing.
 - c. She requires total assistance with grooming.
 - d. She feeds herself but requires intermittent supervision or cueing.
 - e. For mobility its states that she is able to move about by herself.
 - f. She needs physical help from another person for toileting/incontinence care 4 times daily.
 - g. For transfers, she is able to transfer herself.
 - h. For medication management, petitioner was found to need the physical help of another, but does not require PCW assistance.
 - i. She was noted to have aggressive behaviors at times which may interfere with PCW services.
 - j. She has no rare medical conditions noted as interfering with the PCW's assistance with cares.
 - k. IF also requested additional time for services incidental to task.
4. On April 2, 2013, IF requested prior authorization on petitioner's behalf for 28 hours/112 units per week of PCW services and 7 hours/28 units per week of PCW travel time (PA # [REDACTED]) to begin June 1, 2013.
5. On May 1, 2013 the OIG modified the original requested hours for PCW services and granted 23.6 hours/94 units of PCW services weekly 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 3. The petitioner was represented by her father at the hearing. Ultimately, he was unable to provide any evidence to show that the time awarded should somehow be changed.

The documentation shows that the OIG awarded her the PCW time generously. 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 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 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 12th day of August, 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 August 12, 2013.

Division of Health Care Access And Accountability