



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MPA/150564

PRELIMINARY RECITALS

Pursuant to a petition filed July 10, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Office of the Inspector General (OIG) in regard to Medical Assistance, a telephonic hearing was held on August 07, 2013, at Milwaukee, Wisconsin. At the request of petitioner, the hearing record was held open for petitioner's submission of additional reliable evidence to DHA to establish that the approved 18.25 PCW hours was inadequate to meet the petitioner needs, and then for a reconsideration summary to be issued by OIG. The petitioner failed to submit any new evidence to the DHA even by the date of this decision.

The issue for determination is whether the Department correctly modified (reduced) the petitioner's prior authorization (PA) request for personal care worker (PCW) hours from 28 to 18.25 hours per week.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Representative:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Sharon Bailey, RN consultant
Office of the Inspector General (OIG)
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a 53 year old resident of Milwaukee County who is certified as eligible for MA through the IRIS Program. The petitioner resides with her family (three adult children) in a duplex.
2. Petitioner's oldest daughter, [REDACTED], lives in the upper unit of the duplex, and is petitioner's personal care worker (PCW).
3. The petitioner is diagnosed with Lymphedema (localized fluid retention in the lymph system) and Obesity. Her functional limitations are bowel and bladder incontinence, problems with ambulation, requires a walker, and dyspnea with minimal exertion.
4. On or about April 9, 2013, the petitioner's fee-for-service provider, [REDACTED], requested prior authorization (PA) for MA coverage of personal care worker (PCW) hours of 28 hours per week (112 units per week) 4 hours per day (2 hours in the AM and 2 hours in the PM) 7 days per week for 53 weeks, 96 units per year to be used as needed (PRN), plus travel time for the PCW at a total cost of \$36,640.50. See Exhibit 2.
5. The petitioner's Personal Care Screening Tool (PCST) was completed by screener [REDACTED] on March 6, 2013 at petitioner's home. See Exhibit 2. In that PCST, the screener evaluated the petitioner needs partial physical assistance with bathing, dressing, and transferring. She is documented to be independent with her medications, but requires some assistance with toileting regarding incontinence needs. She is somewhat independent with the actual nebulizer treatments, but needs assistance in setting up the machine and cleaning the machine. The petitioner does ambulate with a walker. The petitioner is incontinent a few times per week, and needs additional assistance due to fully address those incontinence care and cleaning needs.
6. On review of the PA Request, the Office of the Inspector General (OIG) modified the prior authorization request from the requested 28 to 18.25 PCW hours per week plus 96 units per year as needed (PRN), based upon the Personal Care Screening Tool (PCST) assessing the petitioner's PCW needs and further investigation of that assessment. However, the petitioner's request for travel time for her PCW was correctly denied in full, as petitioner's PCW is her daughter who lives in the upper unit of the same duplex.
7. On June 12, 2013, the Division issued a letter Notice to the petitioner informing her that petitioner's PA requested personal care worker services had been reduced from 28 to 18.25 hours per week, and then approved as modified.
8. After reviewing all the submitted documentation, the Division's Nurse Consultant concluded in her detailed July 26, 2013 summary (with attachments) that petitioner needed assistance of 12.75 hours per week for bathing, dressing, grooming, and transfers. Petitioner is able to toilet herself, but needs assistance with her incontinence care which occurs about a few times per week. Additional time of 105 hours per week is added for that incontinence care. In addition, 219 minutes was approved for incidental services (cleaning medical equipment, such as the nebulizer machine and other tasks).
9. The petitioner's representative did not establish with any specific evidence or documentation that petitioner has PCW needs above the approved amount of 18.25 hours per week. See above Preliminary Recitals.

**DISCUSSION**

The Office of the Inspector General (OIG) may only reimburse providers for medically necessary and appropriate health care services and equipment listed in Wis. Stat. §§ 49.46(2) and 49.47(6)(a), as implemented by Wis. Admin. Code Ch. DHS 107. Some services and equipment are covered if a prior

authorization request is submitted and approved by the Division in advance of receiving the service. Finally, some services and equipment are never covered by the MA program.

In the case of PCW services, MA pays only for medically-oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his place of residence in the community. Wis. Admin. Code § DHS 107.112(1)(a). **Covered PCW services include only 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.

(Emphasis added).

Wis. Admin. Code § DHS 107.112(1)(b).

Further, PCW services must be provided according to a written plan of care that is based on an evaluation made by an RN who has visited the recipient's home. Wis. Admin. Code §§ DHS 107.112(1)(a) & (3)(b).

During the August 7, 2013 hearing, the petitioner testified in vague terms that she felt she needed more than 18.25 hours per week of PCW hours. Petitioner's representative, RN [REDACTED], also asserted in general terms that petitioner needed more PCW hours of approval. However, Ms. [REDACTED] only offered generalities, and was unable to provide any specific testimony or reliable evidence/documentation to refute that the above 13 covered PCW services could be completed in the reduced amount of 18.25 hours of PCW hours each week for the petitioner. Furthermore, at the request of petitioner, the hearing record was held open for petitioner's submission of additional reliable evidence to DHA to establish that the approved 18.25 PCW hours was inadequate to meet the petitioner needs, and then for a reconsideration summary to be issued by OIG. The petitioner failed to submit any new evidence to the DHA even by the date of this decision.

The petitioner was unable to refute the convincing evidence and arguments in the Department's July 26, 2013 summary and other Exhibits. Furthermore, petitioner was unable to establish that she has any covered PCW needs that are not being met by the 18.25 PCW hours approved by the Division. Accordingly, based upon review of the entire hearing record, I conclude that the Division has established that it correctly modified the petitioner's PA request from 28.0 hours to 18.25 hours per week.

### **CONCLUSIONS OF LAW**

The Department correctly modified (reduced) the petitioner's prior authorization (PA) request for personal care worker (PCW) hours from 28.0 hours to 18.25 hours per week.

**THEREFORE, it is**

**ORDERED**

The petition for review herein be and the same is hereby 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, Room 651, 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 5th day of December, 2013

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\sGary M. Wolkstein  
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 December 5, 2013.

Division of Health Care Access And Accountability