



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

In the Matter of

██████████
c/o ██████████

DECISION

MPA/150764

PRELIMINARY RECITALS

Pursuant to a petition filed July 16, 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 telephone hearing was held on September 03, 2013.

The issue for determination is whether petitioner meets the criteria for PDN services.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████
c/o ██████████
██████████
████████████████████

Respondent:

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

Written Appearance by: 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:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of ██████████ County.

2. Petitioner has chronic lung disease with recurrent reactive airway process, oral motor swallowing difficulties, and developmental delays with gradual progress. He receives G-tube feedings and medications via G-tube, and utilizes a CPAP machine. Exhibit 2.
3. On April 30, 2013, [REDACTED], a private duty nurse, requested prior authorization (PA) for up to 12 hours of Private Duty Nursing (PDN) services per day or 60 hours per calendar week, over a 52-week period, as described in PA no. [REDACTED]. By a letter dated June 4, 2013, the respondent denied the PA request. Exhibit 2.
4. Petitioner does not require 8-hours per day PDN services. The major concern is monitoring petitioner for potential problems.

DISCUSSION

PDN services are covered by MA under Wis. Adm. Code, §DHS 107.12. Such services may be provided in a home setting when the recipient's medical condition requires more continuous skilled care than can be provided on an intermittent basis. §DHS 107.12(1)(a). PDN services are available only when the person requires at least 8 hours of services daily. Id. If the recipient is a child, the parents' ability to provide cares are considered in determining authorization for a nurse. §DHS 107.12(4)(c); see also the department's Prior Authorization Guidelines, page 120.002.08. Prior authorization from the DHCAA is required for all PDN services. §DHS 107.12(2)(a). Covered home health services do not include supervision of the recipient's condition when supervision is the only service provided at the time. §DHS 107.11(5)(f).

Based upon the record, I conclude that the petitioner does not require 8 hours of PDN services daily. From his mother's description, the need is primarily for supervising his condition because she feels that it is necessary for a professional to monitor and note changes. It is clear that such supervision is not a basis for authorizing daily PDN services.

As noted in the DHCAA's case summary, petitioner might be eligible for intermittent home health services, or services less intensive than nursing services such as personal care worker services. I recommend that petitioner's mother contact a home health provider for an assessment.

CONCLUSIONS OF LAW

The DHCAA correctly denied PDN services because petitioner does not require 8 hours daily nursing care.

NOW, THEREFORE, it is ORDERED

That 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, 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 3rd day of October, 2013

\sPeter McCombs
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 October 3, 2013.

Division of Health Care Access And Accountability