



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

In the Matter of

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DECISION

MPA/150770

PRELIMINARY RECITALS

Pursuant to a petition filed July 22, 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 [“DCHAA”] in regard to Medical Assistance [“MA”], a Hearing was held via telephone on September 03, 2013.

The issue for determination is whether DCHAA was correct to modify Prior Authorization [“PA”] # █ by granting 57 hours (228 units) per week of Personal Care Worker [“PCW”] services instead of the 70 hours (280 units) per week that was requested.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

█ █ (not present at September 3, 2013 Hearing)

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Represented by:

█ █ █ █, petitioner’s sister & Power of Attorney [“POA”]

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Respondent:

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

By: Kelly Townsend, RN, DCHAA Nurse Consultant (Ms. Townsend did not appear at the September 3, 2013 Hearing but submitted a letter dated August 12, 2013 with attachments.)

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

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (57 years old) is a resident of Milwaukee County.
2. Petitioner suffered a stroke in 2002 and has right-sided weakness/paralysis; his left leg is amputated above the knee; he has an impaired right eye, impaired speech, and difficulty swallowing; he has diabetes without complications, high blood pressure, and pain in the limb. Attachments #2, #4 & #7.
3. On May 9, 2013 petitioner's provider, Independence First of Milwaukee, Wisconsin, filed P.A. # [REDACTED] dated May 9, 2013 with DCHAA requesting 70 hours (280 units) per week of PCW services for 53 weeks with a requested start date of July 6, 2013 at a total cost of \$72,345.00. Attachment #1.
4. DCHAA modified PA # [REDACTED] by granting 57 hours (228 units) per week of PCW services instead of the 70 hours (280 units) per week that was requested.; DCHAA sent a letter to petitioner dated June 11, 2013 and entitled *BadgerCare Plus Notice of Appeal Rights* informing petitioner of this modification.
5. Petitioner's PCW service needs were assessed by a Registered Nurse ["RN"] on April 17, 2013 when a *Personal Care Screening Tool* ["PCST"] was completed; the PCST states that petitioner needs total assistance with the following: bathing; dressing upper and lower body; and, grooming. It states that petitioner needs physical assistance from another person with the following: eating (set-up; pureeing of food); toileting (incontinence care; bowl & bladder); transferring (2-person Hoyer lift); medication. It states that he needs intermittent supervision and cuing for mobility in the home. It states that petitioner requires Range of Motion ["ROM"] exercises 2 times per day for 20 minutes each time. The PCST concluded that petitioner needs 37 hours (148 units) per week of PCW services. Attachments #2 & #3.

DISCUSSION

By law, MA pays only for medically necessary and appropriate health care services when provided to currently eligible MA recipients. Wis. Admin. Code § DHS 107.01(1) (May 2009); See also, Wis. Stat. §§ 49.46(2) & 49.47(6)(a) (2011-12). 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 or her place of residence in the community. Wis. Admin. Code § DHS 107.112(1)(a) (May 2009). Further, some medically oriented tasks may be covered as PCW services if the PCW has received special training in performing the task. Wis. Admin. Code §§ DHS 107.112(2)(b) & 107.11(2)(b)1. (May 2009).

In addition to the medically oriented tasks allowed for PCW's that have received special training, the only PCW services covered are 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) & (4)(f) (May 2009).

PCW services must be performed according to a written plan of care developed by an RN. The plan must be based on the RN's visit to the recipient's home and must be reviewed by the RN at least every 60 days via a home visit. Wis. Admin. Code §§ DHS 107.112(3)(b) & (c) (May 2009). DCHAA based its allotment of PCW hours on the April 17, 2013 PCST, a standard *Personal Care Activity Time Allocation Table*, and the *ForwardHealth Personal Care Screening Tool (PCST) Completion Instructions*. See, Attachments #2, #5 & #6. Use of the PCST is required. See, *Wisconsin Medicaid and BadgerCare Update* August 2006 No. 2006-71; and, *Wisconsin Medicaid and BadgerCare Update* January 2007 No. 2007-04. There is no doubt that petitioner requires extensive PCW services. However, the evidence in the record of this matter is that DCHAA was correct to approve 57 hours per week of PCW instead of the 70 hours per week that was requested. First, the PCST calls for only 37 hours per week of PCW services. However, DCHAA approved an additional 20 hours per week (for a total of 57 hours per week). Second, the *Personal Care Activity Time Allocation Table* supports the 57 hours per week approved by DCHAA. Third, pursuant to the *Personal Care Activity Time Allocation Table* DCHAA has allowed the maximum amount of time for bathing, dressing upper and lower body, grooming, eating assistance, and incontinence care. It allowed more than the maximum of amount of time for Hoyer transfers (to allow for a 2-person transfer)¹ and complex positioning. Fourth, it is noted that general supervision is not a covered PCW service. See, Wis. Admin. Code §§ DHS 107.112(1)(b) & (4)(f) (May 2009). Finally, it is noted that ROM can typically be incorporated into PCW assistance with Activities of Daily Living ["ADLs"]. See, Attachment #6 (page 13).

Petitioner's sister testified that petitioner cannot articulate, has aggressive behavior, and that the only thing he does for himself is feed himself. She testified that many things are not covered by the hours requested and that the requested hours are needed to keep petitioner healthy. She also testified that petitioner has seizures and colon cancer -- but there is no documentation of this in the record of this matter. Based on the evidence in the record of this matter, as outlined above, it must be concluded that the 57 hours of PCW services per week approved by DCHAA is sufficient. Petitioner may have his provider file a new PA request if he obtains additional relevant documentation.

CONCLUSIONS OF LAW

For the reasons explained above, DCHAA was correct to modify PA # [REDACTED] by granting 57 hours (228 units) per week of PCW services instead of the 70 hours (280 units) per week that was requested.

¹ On July 8, 2013 petitioner's provider submitted a *Prior Authorization Amendment Request*, dated June 24, 2013, requesting an increase in PCW services of 2 hours per day (56 units per week) to account for 2-person Hoyer lift transfers. For the reasons cited above, this request must be DENIED.

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 19th day of September, 2013

\sSean P. Maloney
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 19, 2013.

Division of Health Care Access And Accountability