



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████ ██████
██████████████████
██

DECISION

MPA/151908

PRELIMINARY RECITALS

Pursuant to a petition filed September 9, 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 (DHCAA or Division) in regard to Medical Assistance (MA), a hearing was held on October 10, 2013, by telephone.

The issue for determination has been resolved.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

██████ ██████
158 Meade Ave
Oconto Falls, WI 54154-1242

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By written submission of
Marcie Oaks, 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:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Oconto County. She is certified for MA.
2. On July 19, 2013, a prior authorization request was submitted on the petitioner's behalf for personal care worker (PCW) services. Service was requested at the level of 27.75 hours weekly,

to begin August 1, 2013, and lasting for one year. On August 7, 2013, the Department notified the provider that only 23.25 hours weekly had been approved; the Department also notified the petitioner that the request had been “modified” to a lower amount of time.

3. A personal care screening tool (PCST) assessment done of the petitioner in July 2013 found that the petitioner required 27.75 hours of PCW care weekly.
4. The Division’s basis for reducing hours was that it questioned the need for the incontinence care at the frequency level requested.
5. The petitioner, age 23, has a diagnosis of paraplegia with a neurogenic bladder from a 2008 motor vehicle accident. She is alert and oriented, but requires assistance with her activities of daily living which include bathing, dressing, transfers and incontinence care. The petitioner’s incontinence care includes straight catheterization plus the emptying of the container; she also has accidents between catheterizations. She is wheelchair bound.
6. The petitioner’s hearing request included a letter from her physician. That letter stated that the petitioner is currently pregnant, and noted that pregnant women may experience increased frequency of urination. It also advised that she is prone to urinary tract infections. Based on this additional information, the Division agreed to increase the authorized PCW hours to the requested 27.75 effective September 17, 2013.

DISCUSSION

Personal care worker service (PCW), as defined at Wis. Admin. Code §DHS 107.112(1), is an MA-covered service, subject to prior authorization after the first 250 hours per calendar year. Wis. Admin. Code §DHS 107.112(2) (May 2009). In determining whether to approve such a service request, the Division employs the generic prior authorization criteria found at §DHS 107.02(3)(e). Those criteria include the requirements that a service be a medical necessity, appropriate, and an effective use of available services. *Id.* The Division argues that the authorization criteria have not been satisfied for the reason given in Finding #4 above.

The state code restricts MA-covered PCW tasks as follows:

(b) Covered personal care services are:

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(2)(b).

After receiving the letter from the petitioner’s physician, the Division increased its authorization to the 27.75 hours requested by the petitioner. The petitioner does not object to this result.

For future reference, the petitioner wondered if a relative could be paid by the MA program to perform catheterization–related cares. First, code requires that a registered nurse must be the supervisor of a person providing PCW care to a Medicaid-pay patient. It also requires that the PC worker must have met certain training requirements. The code also states:

- (4) NON-COVERED SERVICES. The following services are not covered services:
 - (a) Personal care services provided in a hospital or a nursing home or in a community-based residential facility, ... with more than 20 beds;
 - (b) Homemaking services and cleaning of areas not used during personal care service activities, unless directly related to the care of the person and essential to the recipient's health;
 - (c)...;
 - (d) Personal care services provided by a responsible relative under s. 49.90, Stats.;
- ...

Wis. Admin. Code § DHS 107.112(4).

The petitioner may wish to ask this question of her PCW provider. Additionally, the petitioner may wish to look into the IRIS program, if it is available in her county, as that program offers much flexibility in employing caregivers. The IRIS participant handbook is available online at http://www.tmg-wis.com/iris/docs/iris_handbook_h_1111.pdf.

CONCLUSIONS OF LAW

- 1. Effective September 17, 2013, the Division increased its authorization to the 27.75 hours requested by the petitioner. The petitioner does not object to this result.

THEREFORE, it is ORDERED

That the petition 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 15th day of October, 2013

\sNancy J. Gagnon
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 15, 2013.

Division of Health Care Access And Accountability