



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/152593

PRELIMINARY RECITALS

Pursuant to a petition filed October 03, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Department of Health Services in regard to Medical Assistance, a hearing was held on November 14, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Department of Health Services (the agency) correctly denied Petitioner's request for authorization of Personal Care Worker (PCW) hours.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

With:

Lisa Woodall, Disability Benefit Specialist
Milwaukee County
Disabilities Services Division
1220 W. Vliet St. Suite 300
Milwaukee, WI 53205

Respondent:

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

By: Sharon [REDACTED], RN Consultant

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

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner has multiple diagnoses that include cardiomyopathy with ICD placement, chronic pain, carpal tunnel syndrome and diabetes mellitus. (Exhibit 3; Exhibit 4, pg. 7)
3. On July 14, 2013, Premium Home Health Care completed a Personal Care Screening Tool. (Exhibit 4, pg. 11)
4. On July 12, 2013, Premium Home Health Care submitted, on behalf of Petitioner, a request for prior authorization of PCW hours, 158 units (39.5 hours) per week for 53 weeks with 28 units (7 hours) per week of travel time for the PCW, all at a cost of \$197,160.00 per year. (Exhibit 4, pg. 6)
5. On September 19, 2013, the agency sent Petitioner a notice indicating that the request for PCW hours was denied. On September 19, 2013, the agency sent Premium Home Health Care notice of the same. (Exhibit 4, pgs. 50-55)
6. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on October 3, 2013. (Exhibit 1)
7. On October 30, 2013, two nurse auditors from the Department of Health Services, Office of the Inspector General went to Petitioner's home as part of an audit of Premium Home Health Care. At that time the nurse auditors completed another Personal Care Screening Tool. (Testimony of [REDACTED] and [REDACTED]; Exhibit 5, attachment 9.)

DISCUSSION

Personal Care Services are a covered service by Medicaid. They are defined 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. These services shall be provided upon written orders of a physician by a provider certified under s. DHS 105.17 and by a personal care worker employed by the provider or under contract to the provider who is supervised by a registered nurse according to a written plan of care." *Wis. Admin. Code DHS §107.112(1)(a)*.

Prior authorization is required for personal care services in excess of 250 hours per calendar year and for home health services covered under *Wis. Admin. Code DHS §107.11(2)*, that are needed to treat a recipient's medical condition or to maintain a recipient's health. *Wis. Admin. Code DHS §107.112(b)*

The Department of Health Services requires prior authorization of certain services to:

1. Safeguard against unnecessary or inappropriate care and services;
2. Safeguard against excess payments;
3. Assess the quality and timeliness of services;
4. Determine if less expensive alternative care, services or supplies are usable;
5. Promote the most effective and appropriate use of available services and facilities; and
6. Curtail misutilization practices of providers and recipients.

Wis. Admin. Code § DHS107.02(3)(b)

"In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;

8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including Medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.”

Wis. Admin. Code §DHS107.02(3)(e)

“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. Adm. Code. §DHS 101.03(96m)

Petitioner has the burden to prove, by a preponderance of the credible evidence, that the requested services meet the approval criteria.

In determining how many hours of personal care services an individual is allowed, the service provider, in this case, Premium Home Health Care, completes a personal care screening tool (PCST) that evaluates a patient’s need for assistance with bathing, dressing, grooming, eating, mobility, toileting, transferring and medically oriented tasks. A link to the blank form can be found in the on-line provider handbook located on the Forward Health website: <https://www.forwardhealth.wi.gov/WIPortal> under topic number 3165.

The responses are then entered into a web-based PCST, which cross references the information with the Personal Care Activity Time Allocation Table. This can also be found at the aforementioned website. A copy of the table was also attached to the OIG letter, Exhibit 5, attachment 1. The Personal Care Activity Time Allocation Table lists the maximum allowable time for each activity.

Ms. [REDACTED] testified that she reviewed Petitioner’s prior authorization request and determined that Petitioner’s medical records did not support the medical necessity for any personal care worker hours.

BATHING

The personal care screening tool PCST completed in July 2013, indicated that Petitioner needs assistance getting in and out of the shower, washing both her upper and lower body, and washing her hair. Ms. [REDACTED] testified that when the OIG completed its own PCST in October 2013, Petitioner reported that she is able to get in and out of the tub, and is able to bathe with her shower chair, but needs assistance washing her hair. Ms. [REDACTED] testified that Petitioner was able to sit with her leg tucked underneath her during the visit and demonstrated that she could bend over and reach her feet. At the hearing, Petitioner testified that she is generally able to bathe herself, but has difficulty reaching her feet and washing her hair.

Clearly, the PCST completed in July 2013 did not accurately assess Petitioner's needs, because it assessed Petitioner's needs at a level, even greater that Petitioner did. Petitioner's testimony concerning her ability to completely bathe herself was also questionable. Given that Petitioner was able to sit with her leg underneath her and demonstrated to Ms. [REDACTED] and Ms. Miller her ability to reach her feet, Petitioner should be able to wash her feet while sitting on a shower chair.

With regard to hair washing, if that is the only bathing-type activity that a person needs help with, it is not considered "bathing" for purposes of the PCST. *See the On-line Provider Handbook Topic #11497; Exhibit 5, attachment 7*

Based upon the foregoing, it is found that the agency correctly denied PCW time for bathing.

DRESSING

The July 2013, PCST indicated that Petitioner needed partial assistance to dress both her upper and lower body and to put on splints that she has for carpal tunnel syndrome. However, Petitioner testified that she is able to dress herself if she sits down. Consequently, it is found that the agency correctly denied PCW time for dressing.

GROOMING

The July 2013 PCST indicated that Petitioner needed assistance with grooming because she has "poor hand grasp and strength from carpal tunnel syndrome...has difficult time grasping grooming items; pt. needs hands on assistance brushing teeth..." (Exhibit 4, pg. 13) However, Petitioner testified that she is able to brush her teeth and that she goes to a salon to have her hair taken care of. In addition, a medical exam performed on September 4, 2013, further contradicted the July 2013, PCST and indicated that Petitioner, "does not have any tingling, numbness in her upper extremities. No weakness in her upper extremities." (Exhibit 5, attachment 6)

Based upon the foregoing, it is found that the agency correctly denied PCW time for grooming.

EATING

Petitioner testified that she is able to feed herself. The PCST from July 2013 indicated that Petitioner needed assistance with setting up her meal due to her carpal tunnel syndrome. However, as discussed above, Petitioner's September 4, 2013 exam does not support the contention that Petitioner's carpal tunnel syndrome is so severe that she is unable to set up a meal for herself. In addition, Petitioner testified that she is able to set up her own meals and that she can and does cook just about anything, given enough time. Based upon the foregoing, it is found that the agency correctly denied PCW time for eating.

MOBILITY

The July 2013 PCST indicated that Petitioner needs constant supervision and physical intervention to move about her home safely. However, Petitioner testified that she is able walk and go up and down the stairs in her home, although she tires easily. In addition, a medical exam from May 27, 2013, indicated that Petitioner was able to ambulate without assistance. (Exhibit 5, attachment 3) Further, a medical exam from June 6, 2013, indicated that Petitioner's fatigue and shortness of breath were improving. (Exhibit 5, attachment 4) Ms. [REDACTED]

testified that at the time of the October 2013 PCST, she observed Petitioner sit, stand and walk from the living room to the kitchen without assistance. Based upon the foregoing, it is found that the agency correctly denied PCW time for mobility.

TOILETING

Petitioner testified that she is able to toilet herself, but sometimes has someone come with her to the bathroom to rub her back due to stomach issues. Regrettably, rubbing a back is not considered a toileting service:

...Personal care worker assistance with toileting includes transfers on and off the toilet or other receptacle used to collect waste, emptying ostomy and catheter bags, changing personal hygiene products used for incontinence, adjusting clothing and cleansing affected body surfaces.

On-line Provide Handbook Topic #11497; Exhibit 5, attachment 7

There is no evidence that Petitioner needs assistance with any other covered toileting activity. Indeed, Petitioner indicated that she is able to dress herself and even the PCST from July 2013, indicated that she is able to change personal hygiene products independently. Accordingly, it is found that the agency correctly denied PCW time for toileting.

TRANSFERS

The July 2013 PCST indicated that Petitioner needed partial physical assistance to transfer out of bed. However, Petitioner indicated that she is able to get out of bed without assistance, but needs to roll, sit up slowly and sit for a spell, before standing up. Based upon Petitioner's testimony, it is found that the agency correctly denied PCW time for transfers.

MEDICALLY ORIENTED TASKS

The July 2013, PCST indicated that Petitioner needed assistance with her glucometer to monitor her diabetes and that Petitioner needed range of motion exercises. However, Petitioner testified that she is able to monitor her own blood sugars and Ms. ■■■ testified that Petitioner demonstrated her ability to do this. In addition, Petitioner's medical records do not support the need for range of motion exercises.

First, the physician signature page of the Home Health Certification and Plan of Care does not include an order for range of motion exercises. (See Exhibit 4, pg. 7) A physician's order is required for medically oriented tasks. *See the On-line Provide Handbook Topic #11497; Exhibit 5, attachment 7* Second, a musculoskeletal exam performed on June 6, 2013, indicated that Petitioner had normal range of motion (Exhibit 5, attachment 4, pg. 6); an exam dated August 1, 2013, did not note any irregularities in Petitioner's range of motion (Exhibit 5, attachment 5); and no irregularities with range of motion were noted during an exam of Petitioner on September 4, 2013. (Exhibit 5, attachment 6) With regard to Petitioner's neck, the exam revealed that lateral bending and rotation were within normal range. (Exhibit 5, attachment 6)

Based upon the foregoing, it is found that the agency correctly denied PCW time for medically oriented tasks.

CONCLUSIONS OF LAW

The Department of Health Services (the agency) correctly denied Petitioner's request for authorization of Personal Care Worker (PCW) hours.

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 Milwaukee,
Wisconsin, this 20th day of November, 2013.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on November 20, 2013.

Division of Health Care Access And Accountability