



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/153201

PRELIMINARY RECITALS

Pursuant to a petition filed October 28, 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 (Division or DHCAA) in regard to Medical Assistance (MA), a hearing was held on December 11, 2013, by telephone.

The issue for determination is whether the Division correctly determined, pursuant to a prior authorization request, that the petitioner requires 20.5 hours weekly of personal care worker (PCW) services.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By written submission of Sharon Bailey, 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 (CARES # [REDACTED]) is a resident of Milwaukee County.
2. In August, 2013, a prior authorization request (#...216) was submitted on the petitioner's behalf for 31.5 hours weekly (plus 96 PRN 15-minute units) of PCW services, beginning October 1,

2013. On September 25, 2013, the Division issued written notice that it was “modifying” the amendment request by approving a decreased amount of PCW time of 20.5 hours weekly, plus PRN time.

3. The Division’s basis for service reduction was that the number of requested hours was not medically necessary. In particular, the Division concluded that MA could not pay for services that did not appear to be necessary after reviewing the IRIS Long Term Care screening done on March 26, 2013 (using the same or similar standards), and two physician visit notes from August and September 2013. These evaluations did not support the notion that the petitioner has limitations in the use of his upper extremities that keep him from grooming and dressing his upper body. These evaluations also did not support a conclusion that the petitioner cannot perform range of motion (ROM) exercises independently, or that he cannot position himself independently.
4. The petitioner, age 53, resides with a friend in an apartment in the community. The petitioner receives IRIS services, and his IRIS worker is his personal care worker. The petitioner has diagnoses of osteoarthritis of the hip, pelvic joint pain, obesity and stable diabetes Type II. He has functional limitations in the areas of endurance and ambulation.

A state Personal Care Screening Tool (PCST) review was performed by a nurse practitioner for the petitioner on July 8, 2013. The PCST results declared that the petitioner required PCW physical assistance with bathing daily, upper and lower body dressing twice daily, grooming twice daily, toileting help four times daily, and range of motion (ROM) exercises twice daily. He is independent in eating and taking medication. The petitioner ambulates in his home with a cane or walker. The petitioner’s behavior and medical condition do not make his cares more time consuming than normal. He is alert, oriented, and able to communicate verbally.

5. The petitioner requires physical assistance with bathing, lower body dressing, toileting, mobility and transfers. He is not incontinent. Per physician visit notes, he does not need physical assistance with upper body dressing, grooming, complex positioning or ROM exercises.

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 #3 above.

The Department asserts that it has reduced the PCW time to the amount it believes is necessary to perform purely PCW tasks. The petitioner contends that he needs all of the requested care time.

The state code does restrict 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).

The petitioner introduced no medical documentation to rebut the information submitted by the Department.

In reviewing the PCW time requested, I note that the provider, Independence First, oddly requested **31.5** PCW hours weekly, with a PCST that only supported a need for **25** hours weekly. I have seen this pattern (asking for more hours than the PCST supports) with this provider before, which does not enhance the provider's credibility. The Division does agree with some of the task time that was requested and aligned with the PCST: 30 minutes daily for bathing, 20 minutes daily for lower body dressing, 20 minutes daily for mobility help, 40 minutes daily for toileting, and 30 minutes daily for transfers. I agree with the Division's position where it diverged from the PCST: no time should be allotted for upper body dressing, grooming, complex position, or ROM exercises. The physician visit notes do not list any problem with the petitioner's upper back/shoulders/arms/hands. No cranial nerve deficits were noted. Accordingly, the Division's determination as to the amount of PCW time to be authorized here is upheld.

CONCLUSIONS OF LAW

1. The petitioner requires 20.5 PCW hours weekly for the current authorization period.

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, 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 30th day of December, 2013

\sNancy J. Gagnon
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 December 30, 2013.

Division of Health Care Access And Accountability