



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/152184

PRELIMINARY RECITALS

Pursuant to a petition filed September 17, 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 hearing was held on November 21, 2013, at Sheboygan, Wisconsin.

The issue for determination is whether the agency properly modified the Petitioner's PA request for physical therapy (PT) services.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Pamela Hoffman

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

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Sheboygan County.

2. On July 7, 2013, the Petitioner's provider submitted a PA request for physical therapy 5x/week for 8 weeks beginning June 29, 2013.
3. Petitioner is 61 years old. He resides at a skilled nursing facility. His primary diagnoses are chronic respiratory failure, muscle weakness and diabetes. He has severe neuropathy with denervation affecting all extremities. Petitioner is on a ventilator at night. He requires assist of two for sit to stand.
4. In June, 2012, the Petitioner was admitted to the hospital in critical condition.
5. Previous PA requests approved PT services 3x/week for 8 weeks for the period of April 19, 2013 – June 12, 2013 and 3x/week for 6 weeks for the period of June 28, 2013 – August 9, 2013.
6. On August 14, 2013, the agency approved PT services 3x/week for 6 weeks.
7. On September 17, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

Physical therapy is covered by MA under Wis. Admin. Code, §DHS 107.16. Generally it is covered without need for prior authorization (PA) for 35 treatment days, per spell of illness. Wis. Admin. Code, §DHS 107.16(2)(b). After that, PA for additional treatment is necessary. If PA is requested, it is the provider's responsibility to justify the need for the service. Wis. Admin. Code, §DHS 107.02(3)(d)6.

In reviewing a PA request the agency must consider the general PA criteria found at §DHS 107.02(3) and the definition of "medical necessity" found at §DHS 101.03(96m). §DHS 107.02(3)(d) requires justification for provision of the requested service to be included in the PA request. §DHS 107.02(3)(e) requires the agency to consider the following criteria in determining whether the request may be approved:

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

Wis. Admin. Code § DHS 107.02(3)(e).

The agency has interpreted the code provisions to mean that at some point the therapy program should be carried over to the home, without the need for professional intervention.

In this case, the agency asserts that the provider has not supplied sufficient information to demonstrate that the requested services meet the criteria. Specifically, the Petitioner has been assessed for needs at home and for PT through Family Care. The agency notes that the Petitioner's argument that Family Care will only pay for in-home care if Petitioner is able to sit to stand with assist of one is not supported. The agency argues it is more cost effective for the Petitioner to receive PT at home with equipment for transferring from sit to stand than to reimburse the provider for an additional 174 PT sessions to get Petitioner to assist of one. In addition, the agency argues the provider has not established there is a medical need to stand with assist of one. Further, the agency contends the provider has not established a medical need for PT service 5x/week to meet the Petitioner's goals. In addition, the functional requirements of the Petitioner appear to be to receive cares, participate in activities of daily living to the best of his ability and participate in an exercise program that may restore his strength and mobility. The agency contends the skills of a PT are not needed 5x/week to achieve these goals.

The Petitioner's wife testified at the hearing. The PT did not appear or submit any additional information. The Petitioner's wife was able to summarize the Petitioner's medical conditions and general goal of strengthening his muscles and improving his health to the point that he can return home. However, I must agree with the agency that the provider has not submitted sufficient information to demonstrate that it is medically necessary for the Petitioner to achieve assist of one for sit to stand and has not submitted information to demonstrate why the skills of a PT are needed 5x/week. The Petitioner's wife noted that there is equipment for the Petitioner to use at the facility. It is not clear why the nursing facility or a home health aide cannot do strengthening exercises with the Petitioner to help achieve his goals.

Based on the evidence submitted, the agency properly approved PT services for the Petitioner 3x/week for 8 weeks.

CONCLUSIONS OF LAW

The agency properly approved PT services for the Petitioner 3x/week for 8 weeks.

THEREFORE, it is ORDERED

That the petition be, and hereby 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 Milwaukee,
Wisconsin, this 16th day of January, 2014

\sDebra Bursinger
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 January 16, 2014.

Division of Health Care Access and Accountability