



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████████ ██████████
████████████████████
██

DECISION

HMO/154049

PRELIMINARY RECITALS

Pursuant to a petition filed December 10, 2013, under Wis. Stat. § 49.45(5)(a), and Wis. Admin. Code § HA 3.03, 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 January 15, 2014, by telephone.

The issue for determination is whether the Division's agent (an HMO) correctly determined, pursuant to a prior authorization request, that the petitioner requires 7 hours weekly of personal care worker (PCW) services.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████ ██████████
████████████████████
██

Respondent:

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

By: Lucy Miller, Nurse Consultant,
and

Atty. Liz Bartlett
iCare
1555 N. Rivercenter Drive
Suite 206
Milwaukee, WI 53212

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County. He is certified for MA, and has been enrolled in the iCare HMO since August 2013.
2. On September 5, 2013, a prior authorization request was submitted on the petitioner's behalf to the MA HMO for 21.0 hours weekly of PCW services, for the September 30 – March 28, 2014 period. The HMO approved the request until such time as it performed its own assessment of the petitioner's care needs. The HMO assessment was done on November 8, 2013. On November 25, 2013, the HMO issued written notice that it was approving a decreased amount of PCW time of 7.0 hours weekly. The Division has reviewed the HMO's action, and concurs.
3. The HMO's basis for service reduction was that the number of requested hours was not medically necessary. In particular, the HMO concluded that MA could not pay for "hands-off" supervision time, could not pay for tasks that are not listed in state code as PCW tasks, and did not see medical documentation that supports the argument that the petitioner needs help with upper body tasks.
4. The petitioner, age 69, resides with his nephew in the community. His nephew is his personal care worker. The petitioner has diagnoses of obesity, hypertension, arthritis, degenerative disk disease with a history of back surgeries, and a history of knee replacement . He has functional limitations in the areas of endurance and ambulation (unsteady gait).

A state Personal Care Screening Tool (PCST) review was performed by a nurse for the petitioner on August 9, 2013. The PCST results declared that the petitioner required PCW physical assistance with bathing daily, upper and lower body dressing twice daily, grooming daily, toileting two times daily, and transferring daily. The petitioner's behavior does not make his cares more time consuming than normal. The PCST also noted that the petitioner was oriented, could communicate his needs verbally, had adequate hearing, and normal vision (with glasses). The petitioner takes oral medications.

5. The HMO sent a physical therapist to interview and assess the petitioner on November 8, 2013. She observed that the petitioner requires the physical assistance of others to bathe, dress/undress his lower body, and trim his toenails periodically. She further observed that he is able to feed himself, transfer, and ambulate within the home independently.
6. The petitioner requires the physical assistance of others to bathe, dress/undress his lower body, and trim his toenails periodically. These services, plus a slight add-on for incidental care activities, require 7.0 hours of time weekly. He is able to feed himself, dress his upper body, transfer, and ambulate within the home independently.

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 and HMO employ 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 and HMO argue that the authorization criteria have not been satisfied for the reason given in Finding #3 above.

The HMO 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 HMO, following state-created time-per-task guidelines, determined that the petitioner required the following times for activities of daily living (ADL) tasks: bathing – 30 minutes, lower body dressing – 20 minutes, and periodic toenail trimming – 5 minutes. The petitioner offered his own testimony at hearing that he needs more time, and that his nephew does many helpful things for him. The petitioner gave no evidence or plausible explanation as to why he could not perform upper body tasks (*e.g.*, a letter from a doctor or physical therapist describing limited range of motion in the shoulders or arms). The HMO's evidence was more persuasive. Thus, I will not be increasing the PCW time calculated for the petitioner by the HMO.

The petitioner did mention that he needs PCW time for his nephew to accompany him to medical appointments, which occur once or twice (variably) per month. This is a justification for additional PCW time on an "as needed" basis. Such "as needed" time is listed on prior authorization requests as "PRN" time. The prior authorization request submitted by the service provider in September 2013 did not request PRN time, even though PCST suggested that some PRN time might be warranted. The petitioner may wish to speak to his care coordinator or the service provider about seeking approval for PRN time for help getting to medical appointments.

CONCLUSIONS OF LAW

1. The HMO correctly determined the amount of PCW time required by the petitioner on a weekly basis 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 17th day of January, 2014

\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 January 17, 2014.

iCare
Division of Health Care Access and Accountability