



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

In the Matter of

██████████ ██████████
██
██

DECISION

HMO/154292

PRELIMINARY RECITALS

Pursuant to a petition filed December 19, 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 in regard to Medical Assistance, a hearing was held on February 19, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the Department or its agent erred in its modification of the PCW PA.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████ ██████████
██
██

Respondent:

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

By: Elizabeth Bartlett
iCare
1555 N. Rivercenter Drive
Suite 206
Milwaukee, WI 53212

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.

2. On October 2, 2013, iCare received a request for prior authorization (PA). The PA requested personal care worker hours in the amount of 3.75 hours per day. The PA request was accompanied by a personal care screening tool completed by [REDACTED] [REDACTED], RN.
3. Petitioner's HMO, iCare, contracted with HealthReach to conduct an in-home assessment on December 6, 2013, including a new PCST. iCare determined that one hour per day of PCW time was appropriate.
4. Petitioner appealed.

DISCUSSION

MA coverage of PCW services is described in the Wis. Adm. Code, §DHS 107.112. Covered services are specified in subsection (1), and are defined generally 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." Examples of covered services are assistance with bathing, with getting in and out of bed, with mobility and ambulating, with dressing and undressing, and meal preparation. The Code also provides that, "No more than one-third of the time spent by a personal care worker may be in performing housekeeping activities." Wis. Adm. Code, § DHS 107.112(3)(e).

In determining the number of PCW hours to authorize, the OIG uses the standard above along with the general medical necessity standard found at Wis. Adm. Code, § DHS 101.03(96m). Essentially the medical necessity standard requires a service to be basic and necessary for treatment of an illness, not necessarily the best service possible, and not just for convenience. To determine the number of PCW hours to authorize the OIG uses the Personal Care Screening Tool (PCST), a computer program it believes will allow it to consistently determine the number of hours required by each recipient. The PCST allots a specific amount of time in each area the recipient requires help, which the OIG's reviewer can then adjust to account for variables missing from the screening tool's calculations.

In the case of PCW services, MA pays only for medically-oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his place of residence in the community. Wis. Admin. Code § DHS 107.112(1)(a). Covered PCW services include only the following:

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(1)(b).

It is petitioner's burden to establish the necessity of the requested time. At hearing, both petitioner and his caregiver testified regarding his needs. The testimony was credible and provided sufficient detail for

me to understand why the requested time is needed. The respondent's evidence could, thus, rebut the petitioner's explanation.

At the time of hearing, the person who conducted the most recent screen of petitioner on behalf of iCare did not testify. I was unable to question about her personal observations or method of conducting the assessment. I was unable to question her about the specific areas of dispute or whether any of the information provided through testimony of petitioner and his caregiver had been fully considered prior to the reduction, or whether the information could lead to a different conclusion now. iCare's prior authorization nurse who entered the PCST data into the DHS algorithm also did not testify. Ms. Bartlett argued as best she could based on only the paper record, but, as all of this was hearsay and many material points were disputed by petitioner, the credible testimony of petitioner and his caregiver was simply more persuasive. I am not convinced that the reduction was appropriate on this record.

I note to the petitioner that his provider will not receive a copy of this Decision. In order to have the claim approved, the petitioner must provide a copy of this Decision to the provider. The provider must then submit a billing statement with a copy of this Decision to receive the approved coverage.

CONCLUSIONS OF LAW

Petitioner established that 3.75 hours per day of PCW time is medically necessary and respondent failed to provide adequate rebuttal at hearing.

THEREFORE, it is

ORDERED

That the petitioner's provider, New Health Services, is authorized to provide to the petitioner the originally requested 3.75 hours per day of PCW services, and submit its billing statement to iCare or the Department's fiscal agent, Forward Health which is directed to pay the claim. A copy of this decision should accompany that statement.

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 6th day of March, 2014

\sJohn P. Tedesco
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 March 6, 2014.

iCare
Division of Health Care Access and Accountability