FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

MPA/154508

PRELIMINARY RECITALS

Pursuant to a petition filed December 28, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Wisconsin Department of Health Services, Division of Health Care Access and Accountability (DHCAA), in regard to the denial of Medical Assistance coverage, a telephone hearing was held on January 22, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the Division of Health Care Access and Accountability correctly denied the petitioner's prior authorization request ("PA/R") for coverage of personal care worker (PCW) services.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
Written Appearance By: Robert Derendinger, R.N., Nurse 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:
Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County. She is certified as eligible for MA.

2. The petitioner is 41 years old, and single. She lives alone in a private residence. She has the following conditions: spondylitis without myelopathy (i.e., degenerative osteoarthritis of the spine without nerve interruption), myalgia, and myositis (i.e., muscular pain and inflammation); and sleep apnea. She has bladder and bowel incontinence, and poor endurance generally. She is described with an activity level of "up as tolerated".

3. The petitioner's personal care worker is her adult daughter, [redacted]. [redacted] reports that MA has covered PCW services she has provided to the petitioner for about 5 years.

4. On or about November 1, 2013, the petitioner's fee-for-service provider agency, [redacted] of Milwaukee, Wisconsin, requested prior authorization (PA) for MA coverage of personal care worker services (from [redacted]) at the rate of 32.5 hours (i.e., 130 units) per week, plus 7 hours (28 units) of travel time per week, for 53 weeks; at a total cost of $167,480.

5. [redacted] did submit a Personal Cares Screening Tool (PCST) assessing the petitioner's care needs as 130 units per week, as assessed by employee [redacted], on September 10, 2013.

6. On review of the PA Request, the Division of Health Care Access and Accountability denied the prior authorization request on December 9, 2013. The Division determined that the medical necessity of the requested PCW services had not been supported by the submitted medical documentation.

7. The DHCAA Nurse Consultant determined that the PCST assessment by the provider was unreliable as it did not indicate that a face-to-face assessment occurred in September, 2013, and further that it incorporated and relied upon information obtained during a face-to-face assessment that had occurred in September, 2012. See, Exhibit #3, at pp. 8 – 11.

8. On December 28, 2013, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the denial of her PA/R for personal care worker services.

9. The clinical documentation submitted by the petitioner and her provider includes a Personal Care Screening Tool that incorporates historical medical information from September, 2012, in a screening performed in September, 2013; and it does not appear that the screening was performed on a face-to-face basis in September, 2013.

10. The petitioner does not utilize any durable medical equipment in her home to assist her in self cares or functioning.

11. The petitioner spends a majority of the hours of each day without assistance from another and performs ambulation and transfers without assistance from another during these hours.

DISCUSSION

The Division of Health Care Access And Accountability may only reimburse providers for medically necessary and appropriate health care services and equipment listed in Wis. Stat. §§ 49.46(2) and 49.47(6)(a), as implemented by Wis. Admin. Code Ch. DHS 107. Some services and equipment are covered if a prior authorization request is submitted and approved by the Division in advance of receiving the service. Finally, some services and equipment are never covered by the MA program.

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).

Further, PCW services must be provided according to a written plan of care that is based on an evaluation made by an RN who has visited the recipient's home. Wis. Admin. Code §§ DHS 107.112(1)(a) & (3)(b).

DHCAA made its determination after review of extensive documentation. In the extensive and detailed *Summary* prepared by Nurse Consultant Derendinger, he stated as follows:

> As noted above in regards to "Medical Necessity", personal care assistance with ADL's must be consistent with the member's symptoms, illness, injury or disability. No clinical documentation was submitted to support the medical necessity for PCW services; therefore, the request was returned to the provider on 11/19/2013 asking for a physical therapy evaluation. This consultant also inquired as to what durable medical equipment (DME) the member uses as the Plan of Care and PCST indicate no DME is used. It is unclear how the member completes self-cares (transfers, mobility, and toileting) without DME when the PCW is away because the member lives alone.

See, Exhibit #1, p. 4.

Derendinger then notes that the provider resubmitted with a physician's patient notes that confirmed the petitioner has a history of spondylothesis, fibromyalgia, depression and sleep apnea; had recently been treated for an infection related to pierced nipples; and for a resent upper respiratory infection. However, "…these physician visits fail to support a self-care deficit that is related to the member's diagnoses." Exhibit #1, at p.4.

Finally, Derendinger states in Exhibit #1, on p. 5:

> Per the PSCT [sic] Completion Instructions (Attachment 6), 'the PCST must be completed based upon a face-to-face evaluation of the individual in his or her home' and 'the screener must directly observe the member performing the activity.' Because information in the PCST completed on 09/10/2013 includes notes from a previous PCST completed on 09/12/2012, it does not appear that an appropriate face-to-face evaluation in the home has been done.

Derendinger then also goes on to note that the petitioner does not demonstrate that she has been provided with or trained to use any home health equipment to maintain independence or self cares; that the need for constant supervision is not demonstrated in the clinical evidence where, as here, a patient lives alone and for large periods of the day ambulates and transfers without assistance; and the petitioner may be independent in medication administration with the simple use of a pill box organizer.

Derendinger also found the PCST assessment substantially deficient in terms of qualitative analysis, finding it failed to accurately capture the petitioner's true needs for PCW services, and noting that it was performed on the same day as the patient notes submitted from Dr. [redacted], but none of [redacted]'s then current report on the petitioner's condition were reflected in the PCST of the same date.

The petitioner, and her daughter/PCW, testified that the petitioner needs assistance every morning and every evening with dressing, hygiene, showering, hair brushing, meal preparation, and the reverse in the evening, undressing. [redacted] testified that she spends about 4 ½ hours in providing cares in the morning, and that during the later work session, she does the laundry, cleans house, administers medications, and sometimes takes the petitioner to medical appointments.

I have also reviewed all of this information. See, Exhibits #1 - #4. I have reviewed the patient's Plan of Care, and Ms. [redacted]'s anecdotal recitation of the cares she provides. Based on the evidence in the record of this matter I must affirm the DHCAA denial decision. The petitioner's evidence is insufficient to establish that this PCST, or this requested PCW regimen, is required to complete the petitioner's personal care needs. The mere assertion that it takes she requires "constant supervision" is poorly documented and insufficient to overcome the professional nursing review determination that the hours requested are not shown to be medically necessary. The burden of proof to establish that the services are required is on the petitioner. The mere assertion of large chunks of daily time devoted to PCW services is simply insufficient to justify 32.5 hours a week of paid PCW services sought here. It is also possible that a provider can provide extensive periods of care to a patient, without all of the cares being provided qualifying as MA-covered PCW services that are reimbursable.

The DHCAA denial action is sustained. Nothing in this Decision prevents the petitioner from filing a new PA Request at any time which establishes with clinical documentation that the PCW services requested take this long to perform, and that the duration of the performance is warranted by actual care needs. The petitioner's documentation in this record is insufficient to be found reliable.

CONCLUSIONS OF LAW

That the MA program correctly denied the petitioner's PA Request for 32.5 hours of PCW services and 7 hours of travel reimbursement, per week; the evidence presented does not establish by the preponderance of the evidence that these services as requested are medically necessary.

NOW, THEREFORE, it is **ORDERED**

That the petition for review herein be and the same is hereby 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 5th day of February, 2014

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\sKenneth D. Duren, Assistant Administrator
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 February 5, 2014.

Division of Health Care Access and Accountability