



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

HMO/155014

PRELIMINARY RECITALS

Pursuant to a petition filed January 21, 2014, 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 April 03, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly denied the Petitioner's request for personal care worker (PCW) hours.

There appeared at that time and place 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: Meri DeGarmo, Nurse Consultant

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

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County. He is 52 years old.

2. Petitioner's diagnoses include gait abnormality, syringomyelia, muscle weakness and abnormal involuntary movement. Petitioner had surgery on June 1, 2013 for the syringomyelia condition. He has a wheelchair and crutches. He is permitted to be "up as tolerated" for activities.
3. Petitioner has received PCW services since September, 2012.
4. On September 27, 2013, a personal care screening tool (PCST) was completed. The assessor noted the Petitioner's needs as follows:
 - Bathing – Level D – bathes in shower/tub or bed with partial physical assistance, 7 days/week
 - Dressing – Upper – Level D – needs partial physical assistance, 7 days/week
 - Dressing – Lower – Level E – depends entirely upon another person, 7 days/week
 - Grooming – Level E – needs partial physical assistance, 7 days/week
 - Eating – Level A – feeds self
 - Mobility – Level B – able to move about by himself with intermittent supervision or cueing, uses crutches, 7 days/week
 - Toileting – Level D – needs physical help, needs assistance with clothing adjustment, 3x/day, 7 days/233k
 - Transferring – Level D – needs physical help but is able to participate, uses crutches, needs assist with boost from chair/bed, 7 days/week
 - Medication Assistance – Level A – independent
5. On October 17, 2013, iCare received a request for preauthorization of 3.5 hours/day of PCW services for the Petitioner for the period of November 7, 2013 – May 5, 2014.
6. On December 18, 2013, iCare conducted an assessment of the Petitioner. The assessor determined the Petitioner was independent with all activities of daily living.
7. On January 6, 2014, the agency issued a notice to the Petitioner that the requested PCW services were not approved.
8. On January 21, 2014, the Petitioner filed an appeal with the Division of Hearings and Appeals.
9. On March 12, 2014, the Petitioner saw his physician who noted that the Petitioner was in a moderate amount of discomfort. The physician noted the Petitioner has extreme difficulty getting from the chair to the examination table. He also noted that range of motion is extremely limited secondary to instability of lower extremities. The physician indicated that Petitioner had occasional involuntary movements in the left lower extremity during the examination. Petitioner's strength was noted to be 5/5 in the bilateral upper extremities and right lower extremity but 4/5 in the entire left lower extremity and 5-/5 with bilateral dorsiflexion. He noted that sensation is severely decreased in both lower extremities. Petitioner reported to the physician that he has good and bad days.

DISCUSSION

i-Care is required to provide or arrange for the provision of medically necessary and appropriate medical services for its enrollees as required under Wis. Stats. § 49.46(2), and Wis. Admin. Code § DHS 107(1). Wisconsin Administrative Code § DHS 107.112(1) states that Wisconsin Medicaid covered personal care services are those medically oriented activities that are 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.

To obtain a PA for personal care services, providers are required to submit documents to the MA program that accurately and completely demonstrate the need for the requested personal care services. Providers are to use the Personal Care Screening Tool (PCST) to determine the allocation of PCW time needed. The PCST is a tool that collects information on an individual's ability to accomplish activities of daily living, instrumental activities of daily living, medically oriented tasks delegated by an RN and the member's need for personal care worker assistance with these activities in the home. The PCST must be completed based on a face-to-face evaluation of the member in the member's home. The screener must directly observe the member performing the activity before selecting the member's level of need.

The two assessments done in September and December, 2013 reach very different conclusions with regard to the Petitioner's ability to perform activities of daily living. Neither of the individuals who performed the assessments was present for the hearing to testify with regard to their conclusions.

Petitioner testified that he has good and bad days. He felt that the assessor in December saw him on a good day. Petitioner stated that his primary difficulty is with pain and tremors in his legs. The Petitioner's current caregiver testified that he falls frequently due to the tremors and pain in his leg. The tremors occur frequently throughout the day and interfere with his ability to walk or stand. She stated that she has found him on the floor and has observed him fall. She testified that he needs assistance moving about the house due to the tremors and his resulting fall risk. She assists him getting to the bathroom for showers and toileting. Once on the shower chair or on the toilet, he is independent in his ability to complete the tasks. She stated that he needs assistance with lower extremity dressing due to the tremors in his legs. The caregiver testified that she assists with transfers on bad days, approximately 3 days/week. On those days, the Petitioner's legs are very stiff and it is difficult for him to move. The caregiver indicated that the Petitioner is independent with upper body dressing, medication assistance and eating. Meal preparation is a problem because the Petitioner cannot stand to prepare meals.

The totality of the evidence presented at the hearing demonstrates that the Petitioner needs assistance with activities of daily living with the exception of upper body dressing and grooming which he can perform independently. Specifically, the evidence supports the Petitioner's need for assistance with bathing, lower body dressing, grooming, mobility, toileting and transferring as assessed in the September, 2013 PCST with one exception. The Petitioner's caregiver testified that the Petitioner needs assistance with transferring on "bad days", approximately 3 days/week, not 7 days/week as indicated in the PCST. The Petitioner is independent with upper body dressing, eating and medication assistance. The evidence demonstrates the Petitioner requires 860 minutes/week of assistance with ADLs and an additional 294 minutes are added for services incidental to tasks for a total of 1154 minutes/week or 19.2 hours/week.

Please note that this decision is not being issued to the Petitioner's provider. The Petitioner should supply a copy of the decision to Preferred Home Health Services.

CONCLUSIONS OF LAW

The Petitioner requires 19.2 hours/week of PCW assistance.

THEREFORE, it is

ORDERED

That Petitioner's provider may re-submit its request for 19.2 hours/week of PCW services for the Petitioner, along with a copy of this decision, to ForwardHealth for payment and ForwardHealth is directed to make payment accordingly.

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 5th day of May, 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 May 5, 2014.

iCare
Division of Health Care Access and Accountability
Lucy.Miller@wisconsin.gov