



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/155098

PRELIMINARY RECITALS

Pursuant to a petition filed January 24, 2014, 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 ["DHCAA"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on March 4, 2014.

The issue for determination is whether it was correct to modify Prior Authorization ["PA"] # [REDACTED] which requested 31.5 hours (126 units) per week of Personal Care Worker ["PCW"] services plus 7 hours (28units) per week of PCW travel time.

There appeared at that time via telephone 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: Cindy Zander, RN, BSN, OIG Nurse Consultant (Ms. Zander did not appear at the March 4, 2014 Hearing but submitted a letter dated February 20, 2014 with attachments.)

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

OTHER PERSON PRESENT:

[REDACTED], petitioner's Nurse Assistant

ADMINISTRATIVE LAW JUDGE:
 Sean P. Maloney
 Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (57 years old) is a resident of Milwaukee County, Wisconsin.
2. Petitioner listed diagnoses include chronic pain (lower back and knees), malaise, fatigue, lumbar spondylosis with myelopathy, diabetes with neuropathy, and lumbosacral neuritis; he uses a cane.
3. Petitioner's provider, Independence First, filed PA# [REDACTED] with DCHAA requesting 31.5 hours (126 units) per week of Personal Care Worker ["PCW"] services plus 7 hours (28 units) per week of PCW travel time with a requested start date of January 17, 2014.
4. DCHAA modified PA# [REDACTED] by granting 18.75 hours (75 units) per week of PCW services (instead of the 31.5 hours that was requested), 7 hours (28 units) per week of PCW travel time, and 24 hours (96 units) per year of PCW services on an as needed ["Pro Re Nata" or "PRN"] basis for the time period January 17, 2014 to January 16, 2015.
5. Petitioner's PCW service needs were assessed by a *Personal Care Screening Tool* ["PCST"] completed on October 21, 2013; the PCST concluded that petitioner needs 31.25 hours (125 units) per week of PCW services; the PCST itself is not part of the record of this matter.
6. Medical records that are part of the record of this matter that petitioner has chronic low back pain that radiates, pain in his knees (bilateral knee degenerative disease), and diabetes.

DISCUSSION

By law, MA pays only for medically necessary and appropriate health care services when provided to currently eligible MA recipients. Wis. Admin. Code § DHS 107.01(1) (May 2009); See also, Wis. Stat. §§ 49.46(2) & 49.47(6)(a) (2011-12). 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 or her place of residence in the community. Wis. Admin. Code § DHS 107.112(1)(a) (May 2009). Further, some medically oriented tasks may be covered as PCW services if the PCW has received special training in performing the task. Wis. Admin. Code §§ DHS 107.112(2)(b) & 107.11(2)(b)1. (May 2009).

In addition to the medically oriented tasks allowed for PCW's that have received special training, the only PCW services covered are 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) & (4)(f) (May 2009).

As with any eligibility denial, the burden is on petitioner to show that he is eligible for the requested services. *Lavine v. Milne*, 424 U.S. 577, 583-584 (1976). Petitioner has failed to do so.

PCW services must be performed according to a written plan of care developed by a Registered Nurse ["RN"]. The plan must be based on the RN's visit to the recipient's home and must be reviewed by the RN at least every 60 days via a home visit. Wis. Admin. Code §§ DHS 107.112(3)(b) & (c) (May 2009). In this case a standard *Personal Care Screening Tool* ["PCST"] was completed. However, as reflected in the above *Findings of Fact*, the PCST itself is not part of the record of this matter. Medical records that are part of the record of this matter do not support the requested 31.5 hours the week.

Petitioner argues that due to his pain he "can barely do anything" and that he needs all the hours of PCW that were requested. He argues that "information from my physician was misunderstood and not true" -- but he presents no medical documentation to support this.

DCHAA based its determination to grant only 18.75 hours per week (plus 7 hours per week of PCW travel time and 24 hours per year of PCW services on an as needed basis) on its evaluation of the PCST, medical records, and the use of the *Personal Care Activity Time Allocation Table*. In the absence of additional medical evidence DCHAA's determination must be affirmed.

Petitioner may, if he wishes, have his provider file another PA request along with medical documentation that clarifies his medical condition.

CONCLUSIONS OF LAW

For the reasons explained above, DCHAA was correct to modify PA# [REDACTED] by granting 18.75 hours (75 units) per week of PCW services (instead of the 31.5 hours that was requested), 7 hours (28 units) per week of PCW travel time, and 24 hours (96 units) per year of PCW services on an as needed basis.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby DISMISSED.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 28th day of March, 2014

\sSean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 28, 2014.

Division of Health Care Access and Accountability