



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/155248

PRELIMINARY RECITALS

Pursuant to a petition filed February 03, 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 in regard to Medical Assistance, a hearing was held on March 20, 2014, at Waukesha, Wisconsin. After the hearing, the record was held open for submission of additional documentation by the Petitioner. Additional documentation was received on March 27, 2014 and the record was closed.

The issue for determination is whether the agency properly denied a PA request for private duty nursing.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Kelly Townsend

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

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County. He is 16 years old and lives at home with his family.
2. The Petitioner's primary diagnosis is cerebral palsy with hydrocephalus. He also has diagnoses that include bronchopulmonary disease, seizures, development delay, behavioral issues including self-abusive behavior. He has a shunt placed to manage his hydrocephalus and a gastrostomy tube (G-tube) for feedings. He is non-ambulatory.
3. On November 21, 2013, the agency received a PA request from the Petitioner's provider requesting private duty nursing services of up to 56 hours/week starting November 21, 2013.
4. On January 14, 2014, the agency denied the Petitioner's PA request for private duty nursing services.
5. On February 3, 2014, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

The agency only reimburses 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 Wisconsin Administrative Code, Chapter DHS 107. Some services and equipment are covered only if a prior authorization request is submitted and approved by the agency in advance of receiving the service. Private duty nursing (PDN) requires prior authorization. Wis. Admin. Code § DHS 107.12(2).

The agency concluded that the clinical documentation submitted by the provider did not prove that the petitioner required at least 8 hours per day of skilled nursing services, which is the care threshold for the approval of private duty nursing services. See, Wis. Admin. Code §§DHS 107.12, 107.11(2)(a). In addition, the agency notes that only time spent in direct care that requires the skills of a licensed nurse is covered for private duty nursing. These tasks may include, but are not limited to: application of dressings involving prescription medications and aseptic techniques; G-tube feedings; injections; insertion and sterile irrigation of catheters; nasopharyngeal and tracheostomy suctioning; treatment of extensive decubitus ulcers or other widespread skin disorders.

The agency reviewed each part of the physician's orders submitted with the PA request. It concluded that G-tube feedings, scheduled medications, PRN medications, nebulizer treatment administration, oxygen administration/saturation, vital signs and oral suctioning required for the Petitioner are all tasks that can be completed or administered by a nurse, home health aide or personal care worker. The agency also asserts that the Petitioner's condition has been stable for a significant length of time. The agency concluded that the Petitioner does not require at least 8 hours/day of skilled nursing services for the services listed in the plan of care. The agency also noted that the Petitioner is highly debilitated and the decision does not reflect his need for home health care services in general.

Petitioner's mother testified on his behalf at the hearing. She noted that the Petitioner's behavioral issues make it difficult to employ home health worker. He becomes very agitated when he has unfamiliar workers. She noted that he often gets out of his restraints and that they need to monitor his skin and circulation.

Petitioner's mother asserts that the stability of Petitioner's condition is a result of the availability of private duty nursing for the previous 9 years. He needs on-going assessments and immediate intervention due to lack of ability to communicate. She contends that intermittent care is not appropriate because seizures, respiratory attacks and open wounds due to self-abuse cannot be scheduled and the Petitioner requires immediate intervention if these occur. She notes that feedings require skilled nursing due to the

complexity of interaction between feedings and medications. She also notes that the Petitioner's bronchopulmonary disease requires ongoing skilled assessment and intervention and his severe contractions cause skin breakdown and need for treatment.

Based on the evidence presented, I find that the agency has properly concluded that the PA request does not demonstrate a need for at least 8 hours/day of skilled nursing care for the Petitioner. As the agency notes, the Petitioner's needs are extensive and this does not mean he does not require extensive home health services. However, the evidence has not established that there is a need for at least 8 hours of skilled care. The primary argument advanced for skilled care by the Petitioner's mother is the need for on-going assessment and monitoring of his condition. The regulations required 8 hours of direct care including G-tube feedings, suctioning, treatment of skin disorders. While the Petitioner requires some of this care, there is insufficient evidence to demonstrate that he needs at least 8 hours of such care by a nurse. As the agency notes, the evidence demonstrates that at least some of the tasks can be delegated to a home health aide or personal care worker and do not require a skilled nurse for at least 8 hours. Again, as the agency notes, the Petitioner does require extensive care which can likely be met at an alternate level of care.

CONCLUSIONS OF LAW

The agency properly denied the Petitioner's PA request for private duty nursing services.

THEREFORE, it is **ORDERED**

That the Petitioner's appeal 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 Milwaukee,
Wisconsin, this 29th day of April, 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 April 29, 2014.

Division of Health Care Access and Accountability