



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted case name]

DECISION

MPA/155439

PRELIMINARY RECITALS

Pursuant to a petition filed February 10, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Office of the Inspector General (OIG) in regard to Medical Assistance, a telephonic hearing was held on March 26, 2014, at Milwaukee, Wisconsin.

The petitioner represented herself during the hearing. However, [Redacted], RN from Independence First also appeared and testified at the hearing. During that hearing, petitioner requested that the record be held open for documents to be submitted to the Division of Hearings and Appeals (DHA), and then for those documents to be sent to the Office of the Inspector General (OIG) for a reconsideration decision with an opportunity for a reply by Ms. [Redacted].

However, instead, Ms. [Redacted] faxed documents on April 8, 2014 to both DHA and also to Ms. [Redacted] at the Office of the Inspector General (OIG). Ms. [Redacted] sent an April 17, 2014 reconsideration summary to me at the Division of Hearings and Appeals and to Ms. [Redacted]. The petitioner requested and was granted an opportunity to respond to Ms. [Redacted]'s reconsideration summary. Ms. [Redacted] was granted until April 28, 2014 to submit to DHA (and to Ms. [Redacted]) her response to Ms. [Redacted]'s reconsideration summary. Petitioner did not submit any response by April 28, 2014. Petitioner requested an extension to submit a response to OIG's reconsideration summary by July 7, 2014. However, neither petitioner nor Ms. [Redacted] sent any response to Ms. [Redacted]'s reconsideration summary even by the date of this decision.

The issue for determination is whether the Department correctly denied the petitioner's prior authorization (PA) request for personal care worker (PCW) services due to petitioner not establishing the medical necessity of PCW services.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted petitioner name]

Respondent:

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

By: Sharon Beck, RN nurse consultant
Office of the Inspector General (OIG)
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 30 year old resident of Milwaukee County who is certified as eligible for MA. The petitioner resides in an apartment with her husband.
2. The petitioner is diagnosed with Sickle Cell Disease and chronic pain. She is able to communicate her needs verbally. She does not have any hearing or visual impairments.
3. The petitioner has not established with any medical documentation that she has any significant deficits which physically interfere with her ability to complete her ADLs other than general chronic pain. When petitioner learned she was pregnant on December 13, 2013, she has reduced her pain medication to prevent any possible harm to the fetus. Petitioner has basically normal range of motion and normal extremities.
4. On or about November 13, 2013, Independence First completed petitioner's Personal Care Screening Tool (PCST) which alleged that petitioner needed 16.25 hours of PCW services per week.
5. On or about November 27, 2013, the petitioner's fee-for-service provider, Independence First, requested prior authorization (PA) for MA coverage of personal care worker (PCW) 17.5 hours for 53 weeks at a total cost of \$25,788.75. See Exhibit 2.
6. OIG sent a notice to the petitioner denying her PA request for PCW services due to the petitioner's PA request and reliable medical evidence did not support the medical necessity of personal care worker (PCW) services for the petitioner. Petitioner did indicate that her physical fatigue and increased pain has been aggravated by her pregnancy (and reduced pain medication).
7. In her March 13, 2014 summary, OIG nurse consultant, [REDACTED] [REDACTED], established valid reasons for why the petitioner's PCW request was denied: a) the documentation submitted by petitioner did not establish that her Sickle Cell disease with related pain interfered with her basic ability to complete tasks independently; b) petitioner is noted to be "non-compliant" with her medications, and is inconsistent in managing her constipation; c) there are non-pharmaceutical interventions for pain management, such as heating pads, ice, exercise, stretching, and relaxation. Nausea, fatigue and constipation are common symptom in pregnancy and can be addressed with ginger, teas, crackers, pacing activities, and stool softeners.
8. The petitioner has not requested any Durable Medical Equipment (DME) which could be used as an assistive device instead of a PCW to help perform ADLS such as shower chair, hand held shower, long handled scrub brush, raised toilet seat, grab bars, dressing sticks and sock buddies.
9. During the July 24, 2013 hearing, petitioner requested that the record be held open for documents to be submitted to the Division of Hearings and Appeals, and then for those documents to be sent to the Office of the Inspector General (OIG) for a reconsideration decision with an opportunity for a reply by Ms. [REDACTED]. See Preliminary Recitals above.

10. The letters from petitioner's physician assistant, [REDACTED] [REDACTED], and the provider's RN did not establish the medical necessity for personal care worker hours, but established petitioner's medical history regarding her sickle cell disease and chronic pain. Ms. [REDACTED]'s letters did not address what activities of daily living (ADLs) to establish petitioner had a medical need for a PCW rather than a variety of other option to manage her symptoms and promote her independence (including DME equipment).
11. In her April 17, 2014 reconsideration summary, OIG consultant [REDACTED] confirmed the following reasons for OIG's continued denial of PCW services for the petitioner: a) the two letters from PA [REDACTED] [REDACTED] did not establish or address which specific activities of daily living that petitioner needs assistance from a PCW; b) petitioner sometimes needs injections, but the giving of injections is not a covered PCW service; c) if petitioner needs a medication reminder, there are several assistive devices to provide medication reminders, including specialized alarm clocks and cell phone applications; d) the April, 2014 letter from provider's nurse, [REDACTED] [REDACTED], alleged that PCW services are needed to help petitioner with certain activities, but does not provide any reliable, medical documentation to establish the medical necessity of such PCW services. and e) petitioner has not established any significant deficits which interfere in her ability to complete her ADLs.
12. The petitioner failed to submit to DHA any response to OIG's reconsideration summary by the extended deadline of July 7, 2014 or even by the date of this decision.

DISCUSSION

The Office of the Inspector General (OIG) 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.

(Emphasis added).

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).

During the March 26, 2014 hearing, the petitioner and provider RN [REDACTED] testified and alleged that her Sickle Cell disease and pain problems justified the approval of the requested 17.5 hours per week of PCW services. However, the petitioner was unable to present any reliable, persuasive testimony or evidence to establish that she required PCW services for any of the above 13 covered PCW activities. The petitioner did establish that her symptoms have worsened due to her pregnancy. See Findings of Fact above. However, her pregnancy-related problems do not require the additional services of a personal care worker as indicated by the Wis. Admin. Code § DHS 107.112(1)(b). Furthermore, the Department correctly argued that the provision of PCW assistance cannot replace less expensive alternatives that can be used to maintain the member in his/her home . . . Assistance from a PCW with an activity is not medically necessary if the member can perform the activity safely with the use of an assistive device; therefore the PCW service is not a covered service. DHS 107.02(3) and DHS 107.03(5) and (9), Wis. Adm. Code.

On page 7 of her reconsideration, Ms. [REDACTED] stated in pertinent part: “The documentation submitted did not support that [REDACTED] requires physical assistance to complete tasks. There are a variety of other interventions which should be tried first. Informal supports, such as [REDACTED]’s husband or family, could also assist as needed. The medical necessity of PCW services, as defined in DHS 101.03, has not been met.” The petitioner was unable to refute the convincing arguments in the Department’s March 13, 2014 summary, April 17, 2014 reconsideration summary and Exhibits. Furthermore, petitioner was unable to establish with any reliable evidence that she has any covered PCW needs that are not being met. Accordingly, based upon review of the entire hearing record, I conclude that the Department correctly denied the petitioner’s prior authorization (PA) request for personal care worker (PCW) services due to petitioner not establishing the medical necessity of PCW services.

CONCLUSIONS OF LAW

The Department correctly denied the petitioner’s prior authorization (PA) request for personal care worker (PCW) services due to petitioner not establishing the medical necessity of PCW services.

THEREFORE, it is

ORDERED

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 15th day of July, 2014

\sGary M. Wolkstein
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 July 15, 2014.

Division of Health Care Access and Accountability