



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

In the Matter of

██████████ ██████████
c/o ██████████ ██████████
██████████ ██████████
██████████ ██████████

DECISION

MPA/155809

PRELIMINARY RECITALS

Pursuant to a petition filed February 20, 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 regards to the denial of prior authorization for services under Medical Assistance, a telephone hearing was held on March 26, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the Department correctly denied the petitioner’s Prior Authorization Request for the coverage of 42 hours per week of personal care worker services (35 hours) and travel time (7 hours) as not medically necessary.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████ ██████████
c/o ██████████ ██████████
██████████ ██████████
██████████ ██████████

By: ██████████ ██████████

Same Address

Respondent:

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

Written Appearance By: Sharon Beck, 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 21 year-old resident of Milwaukee County. He is certified as eligible for Medical Assistance. He lives in a private residence. He has diagnoses of developmental delay unspecified, attention deficit with hyperactivity disorder, severe asthma, has difficulty seeing fine print, has no hearing deficits, can communicate his needs verbally with difficulty but he can be understood, has minor forgetfulness of time and medications, but is otherwise oriented. He is tested in the “Low Average” range for full scale IQ (76-84 pts.) and the “Borderline” range for verbal abilities (69-81 pts.) using the Wechsler Adult Intelligence Scale-Fourth Edition (WAIS-IV).
2. The petitioner takes albuterol, zyrtec, flovent, and Mobic on a daily basis. See, Exhibit #1, attached patient notes of 9/23/13.
3. The petitioner has a history of anger issues, poor judgment, sleep walking and learning disabilities.
4. The petitioner’s PCW provider agency asserted in the PA Request that he needs moderate assistance with bathing and dressing; hand over hand assistance to complete oral cares and put clothing in right positions; assistance with grooming; assistance with toileting to wipe. The provider also asserted that he requires standby supervision with ambulation and transfers due to a lack of safety awareness; meal prep and set up; and monitoring to ensure complete mastication of food as he tends to rush. The provider asserted that he needs assistance with light housekeeping and laundry. The provider noted that the petitioner can become aggressive, pinching, scratching, pushing and throwing objects without provocation, and he needs additional time to process requests, so his caregivers cannot rush him through cares, and they must make multiple attempts to gain compliance. See, Exhibit #1, attached Plan of Care dated 12/13/2013.
5. On December 24, 2013, the petitioner’s health care provider, Independence First, submitted a Prior Authorization Request (PA/R) to the Department’s Division of Health Care Access and Accountability requesting coverage of 35 hours of personal care worker (PCW) services per week, for 53 weeks, at a stated cost of \$36,172.50, and 7 hours per week for PCW transportation hours, for 53 weeks, at a stated cost of \$7,234.50. See, Exhibit #2, at p. 5.
6. The PA/R submitted by the provider included a Personal Care Screening Tool assessment performed on November 26, 2013, that estimated the petitioner required 35 hours per week in PCW services to meet his needs. Ibid, at pp. 15-18.
7. The petitioner’s mother testified contradictory to a Services list from the personal care work as to the length of time and supervision needed to perform tasks including, but not limited to, showering, applying skin care lotion, toileting and wiping, personal hygiene, and making the bed. See, the **DISCUSSION** below.
8. On February 19, 2014, the DHCAA issued a Notice to the petitioner informing him that his PA Request for Prior Authorization for reimbursement of personal care worker services had been denied because it did not meet program requirements.
9. On February 20, 2014, the petitioner filed an appeal with the Division of Hearings & Appeals, contesting the DHCAA denial decision of February 19, 2014.
10. The amount of personal care worker services the petitioner needs to meet his medically necessary cares per week is uncertain, and not established by the provider and the petitioner in this record.

DISCUSSION

Personal care services are “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). Covered services include 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(b).

Personal care workers can spend no more than one-third of their time performing housekeeping activities. Like all medical assistance services, PCW services must be medically necessary and cost effective. Wis. Admin. Code, §DHS 107.02(3)(e)1 and 3.

In addition, the Wisconsin Medicaid and BadgerCare Update 2006-71 clearly states:

If after the PCST is completed the RN determines that an insufficient number of units have been allocated for the recipient's personal care services, the RN should identify the factors present to justify a greater allocation of units than that computed by the PCST.

The PCST is designed by the Department to be a *guideline* and "tool" to achieve consistency statewide in the submission of prior authorization requests for the coverage of PCW service claims. It is not, however, a substitute for the professional review process exercised by the Department's Nursing Consultant in the approval, denial or modification of Prior Authorization Requests.

The petitioner's representative asserted that a document prepared by the personal care worker, entitled "My Personal Care Services" justified and supported the PCST service level determination of 35 hours per week, and both supported the PA Request for the 35 hours of PCW services per week, plus 7 hours per week of travel time.

The testimony of the representative, however, completely and thoroughly undercut the reliability of both because she admitted that several care tasks on the "My Personal Care Services" list were overstated therein. Upon direct questioning on the specifics of the Services list, Ms. [REDACTED] admitted that the petitioner can shower with set up, and does not need assistance. The Services list said he needs 15 minutes of assistance 7 days a week to shower. She admitted that the petitioner can brush his own teeth with reminders, but the Services list says he needs 20 minutes of assistance 7 days a week to brush his teeth. She admitted that the petitioner can perform his own skin care, but the Services list says he needs 10 minutes of assistance 7 days a week to apply skin lotion, AND 30 minutes of assistance every day to apply triamcinolone cream. She admitted that he can toilet independently, but sometimes forgets to wipe his bottom. When questioned, she estimated this occurs about 3 times per month. The list, however, provides the he needs 40 minutes of assistance 4 times per day, to toilet, i.e., 2 hours and 40 minutes of toileting time per day for which a PCW must supervise. See, Exhibit #3, p.2, "My Personal Care Services".

I believe that the petitioner needs some PCW services due to cognitive deficits and developmental delays, but the amount medically necessary has not been established by this documentation effort. In fact, the testimony of the petitioner's mother completely throws into question the credibility and reliability of the PCW and her reported services, and the reliability of the entries in the Personal Cares Screening Tool.

At this point I cannot conclude that the Department erred in denying the requested PCW services because the petitioner has not established the clear medical necessity of a given regimen of PCW services. The agency denial must be sustained. The petitioner would be well-advised to file a new Prior Authorization Request demonstrating the hours required to meet his medical needs, with appropriate physician approval of the regimen, and a full set of reliable clinical documents. This decision does not preclude him from filing a new Request for PCW hours. Rather, it means that the current request has been too procedurally defective to grant; and the documentation provided was insufficient, and too questionable, to establish the level of medical necessity of any specific amount of PCW services.

CONCLUSIONS OF LAW

The DHCAA correctly denied the petitioner's PA Request for PCW service hours; the petitioner has not established by the preponderance of the evidence in the record that he was entitled to the requested services.

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 2nd day of April, 2014

\sKenneth D. Duren, Assistant Administrator
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 April 2, 2014.

Division of Health Care Access and Accountability