



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/157289

PRELIMINARY RECITALS

Pursuant to a petition filed April 30, 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 June 10, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly denied the Petitioner's PA request for PCW services.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

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Respondent:

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

By: Sharon Beck

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 is a resident of Milwaukee County. She is 74 years old and lives alone.

2. Petitioner's diagnoses include Chronic Obstructive Pulmonary Disease and debility. Functional limitations are reported as bowel/bladder incontinence, endurance, ambulation and dyspnea with minimal exertion. Petitioner has a cane, walker and nebulizer.
3. On May 30, 2013, a PA request was submitted on behalf of the Petitioner to the agency requesting 36.75 hours/week of PCW services. The PA was approved by the agency for the period of June 8, 2013 – June 7, 2014.
4. On November 12, 2013, the agency conducted an assessment of the Petitioner. The assessors observed the Petitioner climb stairs without assistance or difficulties. The Petitioner reported shortness of breath when bathing but stated that she is able to wash herself at the sink without assistance. She raised her arms over her head and reached her knees and feet while sitting. She was observed to ambulate and transfer independently. She reported she is able to dress, groom, toilet, prepare meals, eat and take medications independently. Based on that assessment, on February 21, 2014, the agency issued a notice to the Petitioner informing her that the agency found the medical necessity of PCW services for her were unsupported. The PA notice informed the Petitioner that the effective date of the action was 30 days from the date of the notice and the appeal deadline was April 7, 2014.
5. Petitioner had physician visits on January 2, 2014, February 4, 2014 and March 4 and 8, 2014. In January, 2014, it was noted that Petitioner has a lung mass. At all of the visits, Petitioner's hypertension and hyperlipidemia conditions are noted as chronic but controlled. Further, it is noted that her diabetes is stable with associated fatigue.

In January, Petitioner was noted to be positive for fatigue, wheezing, myalgias, arthralgias and shoulder tenderness. She was noted as negative for activity change, appetite change, cough, shortness of breath, back pain, muscle weakness, dizziness, respiratory distress. She was further noted to have normal range of motion.

In February, Petitioner was negative for fatigue, cough, arthralgias, myalgias, dizziness, respiratory distress.

On March 4, it was noted that meds control the Petitioner's pain. She reported that she feels like she has knots in her chest and some shortness of breath. It was also report that she has back pain. She was negative for fatigue, cough, chest pain, dizziness, weakness, respiratory distress. She was noted to have normal ROM in her shoulders with strength of 3/5 bilateral arms and some tenderness. Also she had tenderness in bilateral lower legs but full ROM and strength bilateral.

On March 8, Petitioner was noted to be positive for cough, wheezing, activity change, appetite change and fatigue. She was negative for chest pain, leg swelling, shortness of breath, myalgias, back pain, joint swelling, dizziness, weakness. She was noted to have normal breath sounds and effort. She was also noted to have normal range of motion.

6. On March 7, 2014, an assessment was conducted of the Petitioner using the Personal Care Screening Tool (PCST). The PCST estimated a need for 32 hours/week of PCW services as follows:

Bathing – Level D – Petitioner tires easily, complains about nodules in chest causing weakness, 30 minutes/day, 7 days/week.

Dressing – Upper and Lower Body – Level D – needs partial physical assistance from another person; 2x/day, 20 minutes/task, 7 days/week.

Grooming – Level E – needs partial physical assistance; 2x/day, 15 minutes/task, 7 days/week.

Eating – Level C – feeds self but requires physical assistance at meal times with set up; 3x/day, 5 minutes/task, 7 days/week.

Mobility – Level C – moves self with constant supervision and physical intervention to ensure task completion. Petitioner experiences wheezing/sob after ambulating short distance; requires long rest periods during ambulation. Petitioner has gout with swelling to bilateral ankles making it difficult and unsteady; 20 minutes/day, 7 days/week.

Toileting – Level D – needs physical help from another; Petitioner had should repair to L shoulder, reports decreased ROM inability to use arm to wipe self properly; 4x/day, 10 minutes/task, 7 days/week.

Transfers – Level C – transfers self with constant supervision and physical intervention to ensure task completion, Petitioner has generalized weakness, can become dizzy with change in position, COPD; 30 minutes/day, 7 days/week.

Medication Assistance – Level B – needs reminders, Petitioner can be forgetful at times with medication.

Medically Oriented Task: Nebulizer (set up) – requires assistance with setting up nebulizer treatments; 2x/day, 7 days/week.

Services Incidental to Tasks – 478 minutes/week (1/3 of 1435 minutes of PCW services)

7. On March 13, 2014, a Prior Authorization request was submitted on behalf of the Petitioner to the agency requesting 32 hours/week of PCW services.
8. On April 8, 2014, the agency issued a notice to the Petitioner informing her that the agency denied her request for PCW services.
9. On April 30, 2014, the Petitioner filed an appeal with the Division of Hearings and Appeals.

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.

To determine the numbers of PCW hours providers and the DHCAA use the Personal Care Screening Tool (PCST), a tool meant to consistently determine the number of hours required by each recipient. The screening tool allots a specific amount of time in each area the recipient requires help, which the DHCAA's reviewer can then adjust to account for variables missing from the screening tool's calculations.

I first note that this appeal concerns only the denial of PCW services requested in the PA submitted on March 13, 2013. With regard to the discontinuance of services for the previous PA per the agency's notice of February 21, 2014, the Petitioner's appeal is not timely.

The Petitioner appeared for the hearing as well as the Petitioner's daughter and caregiver, CF. The primary argument is that the Petitioner's condition has changed in recent months and her need for assistance has increased. CF indicated that the Petitioner's has been diagnosed with cancer and that she has increased pain and shortness of breath.

The medical records from Petitioner's visits to her physician in January, February and early March, 2014 are not consistent with the PCST findings of March 7, 2014. While the physician notes some increasing issues with wheezing and fatigue between March 4 and 8, there is insufficient information to allow me to conclude that this requires 32 hours/week of PCW assistance.

The testimony of Petitioner and CF indicates that the Petitioner's condition may have changed more significantly since the PA was submitted in March. If that is the case, this decision does not prohibit the Petitioner from seeking a new assessment based on the change in condition and submitting a new PA request to the agency.

Based on the information and evidence presented, the agency properly denied the Petitioner's request for PCW services due to a lack of information showing medical necessity.

CONCLUSIONS OF LAW

The agency properly denied the Petitioner's request for PCW 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 14th day of July, 2014

\sDebra Bursinger
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 July 14, 2014.

Division of Health Care Access and Accountability