



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████
██████
████████████████████

DECISION

HMO/157337

PRELIMINARY RECITALS

Pursuant to a petition filed April 29, 2014, under Wis. Stat. § 49.45(5)(a), and Wis. Admin. Code § HA 3.03, to review a decision by the Division of Health Care Access and Accountability, and its agent HMO, in regards to a reduction of personal care worker hours under Medical Assistance – BadgerCare, a telephone hearing was held on May 28, 2014, at Milwaukee, Wisconsin. At the request of the Department the record was held open for ten days to submit a copy of the Division Consultant’s Summary Letter of May 23, 2014.

The issue for determination is whether the Department, by its HMO agent, i-Care, correctly reduced the petitioner’s personal care worker hours from 4 hours per day to 1.5 hours per day.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

██████
██████
████████████████████

Respondent:

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

By: Liz Bartell, General Counsel
i-Care
1555 N. Rivercenter Drive, Suite 206
Milwaukee, WI 53212

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County. He is enrolled in i-Care. i-Care is a Wisconsin licensed health maintenance organization that contracts with the Department of Health Services to provide and pay for Medicaid (MA) benefits for SSI disabled eligible. i-Care is responsible for making benefit coverage determinations under the MA plan.

2. The petitioner is 61 years old; he lives with his girlfriend in a house. He has generalized arthritis that particularly limits his hips and knees; a history of three fractures to his right leg that resulted in a total right knee replacement in April, 2012, with poor and difficult post-surgical recovery, including pain, stiffness, and abnormality of gait. See, Exhibit #1.
3. On March 24, 2014, [REDACTED] [REDACTED], a registered nurse for Preferred Home Health Care, submitted a Request for Prior Authorization to i-Care requesting approval of coverage by MA for 3.75 hours per day, 7 days per week, of personal care worker (PCW) services. These services were to be performed for two hours in the morning and 1.75 hours in the evening, every day. See, Exhibit #1.
4. Attached to the Request for Prior Authorization, this same nurse provided a copy of a Department mandated Personal Care Screening Tool (PCST) assessment of the petitioner that concluded that he required 59 units per week of PCW care, i.e., an average of 2.11 hours per day, total. See, Exhibit #1.
5. In response to [REDACTED]'s PA Request and PCST, i-Care tentatively approved the requested amount until a home visit could be scheduled and an independent assessment be performed. i-Care then engaged ANS Home Health Services to conduct an in-home assessment with the petitioner, and [REDACTED] [REDACTED], R.N., made the home visit and met with the petitioner on March 28, 2014.
6. Nurse [REDACTED] visited with the petitioner, and Personal Care Worker [REDACTED] [REDACTED], and discussed his abilities and daily care needs with him, and based upon his responses and her observations of him in home, she also completed a Personal Care Screening Tool to review the accurateness of his request from Preferred Home Health Care. This PCST concluded that he needed 6 units per day, i.e., 1.5 hours, seven days per week, or 42 units/10.5 hours per week. See, Exhibit #5, and see; attached Allocation Table. And see also, Exhibits #2, #3, and #4.
7. The petitioner ambulates with a cane.

Nurse [REDACTED] summarized Nurse [REDACTED]'s assessment as follows:

...Mr. [REDACTED] requires partial physical assistance with bathing. Assistance stepping into and out of the tub is needed due to chronic stiffness in both knees. Mr. [REDACTED] did report being independent in washing his body. In regards to dressing his upper and lower body and grooming, ANS assessed Mr. [REDACTED] as needing constant supervision throughout the tasks with physical intervention in at least one step of the task to ensure completion. It is noted that Mr. [REDACTED] reported independence with dressing and grooming activities. Mr. [REDACTED] was documented as needing physical assistance with application of a wrist brace and knee brace as well as compression stocking. He reported independence with eating. He demonstrated a slow but steady gait. He reported dizziness and occasional giving out of his legs. A fall in February 2014 was also documented. In regards to toileting, he uses a raised toilet seat and reported being independent in completing toileting and related hygiene. He demonstrated the ability to transfer independently. Mr. [REDACTED] reported being independent with taking his medications.

See, Exhibit #7, attachment #4, at pp. 1-2.

8. On April 8, 2014, i-Care issued a letter Notice to the petitioner informing him that his PCW services would be decreased, effective April 22, 2014, from 3.75 hours per day to 1.5 hours per day, based upon the independent assessment performed by the ANS nurse. Specifically, the Notice also stated that the petitioner was found to require assistance with bathing, including one episode of dressing/undressing both the upper and lower extremities (maximum time allocated); and that he requires assistance with grooming. Otherwise, RN [REDACTED] concluded that the petitioner was able to do all mobility and other self-care tasks without direct physical assistance. See, Exhibit #6.
9. On April 29, 2014, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the reduction of PCW services on April 22, 2014. Benefits were not continued at the 3.75 hour per day level.

10. On or about May 22, 2014, at the request of i-Care and the DHCAA Managed Care Section, Office of Inspector General Nurse Consultant [REDACTED] [REDACTED], R.N., reviewed the clinical evidence on file from i-Care, the two prior PCST allocations, and performed a third allocation review. Nurse [REDACTED] determined that 50 minutes per day would be sufficient, which she would have rounded up to 1 hour per day.
11. On or about May 23, 2014, [REDACTED] [REDACTED], Policy Analyst for DHCAA, prepared a Summary Letter reporting that [REDACTED] reviewed the Plan of Care, clinical documentation, and both Personal Care Screening Tools described above, and independently affirmed that 1.5 hours per day of PCW services should more that meet the petitioner's modest care needs.
12. At the fair hearing held on May 28, 2014, R.N. [REDACTED] [REDACTED], the Managed Care Nurse Consultant for the DHCAA appeared and testified that she reviewed the two PCSTs and [REDACTED]'s review analysis, and concurred that 1.5 hours per day is more than enough to meet the petitioner's needs, and indeed that, as [REDACTED] concluded, about 1 hour per day should be sufficient in her opinion.
13. Also at the fair hearing, the petitioner asserted that he required more PCW service hours than his provider requested, i.e., that he needs 4.0 hours per day, not 3.75 hours per day. He generally averred that his general arthritis also means he needs help with upper body dressing and grooming, food preparation, housekeeping, grocery shopping, and medication setup.
14. Nurse [REDACTED] found in her review that the petitioner needs 30 minutes per day for bathing; and 10 minutes per day for 1 lower body dressing task, i.e. 40 minutes of total cares, plus 10 minutes per day of incidental services (i.e., ¼ of the total ADLs for a member who lives alone.) See, Exhibit #7, attachment #4.

DISCUSSION

i-Care is required to provide or arrange for the provision of medically necessary and appropriate medical services for its enrollees as required under Wis. Stats. § 49.46(2), and Wis. Admin. Code § DHS 107(1). Wisconsin Administrative Code § DHS 107.112(1) states that Wisconsin Medicaid covered personal care services are those medically oriented activities that are 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.

To obtain a PA for personal care services, providers are required to submit documents to the MA program that accurately and completely demonstrate the need for the requested personal care services. Providers are to use the Personal Care Screening Tool (PCST) to determine the allocation of PCW time needed. The PCST is a tool that collects information on an individual's ability to accomplish activities of daily living, instrumental activities of daily living, medically oriented tasks delegated by an RN and the member's need for personal care worker assistance with these activities in the home. The PCST must be completed based on a face-to-face evaluation of the member in the member's home. The screener must directly observe the member performing the activity before selecting the member's level of need.

A Personal Care Activity Time Allocation Table is used by providers to assist in prorating time for service-specific activities provided by personal care workers.

The clinical evidence and the review of the allocation by at least four nurses all essentially concluding that the Personal Care Screening Tool indicates 1 – 1 ½ hours per day of PCW services will meet this petitioner's rather minimal care needs is overwhelmingly persuasive that the right result has been reached. In contrast, the petitioner's mere assertion that he needs more hours of a PCW attending to him, performing many meal prep and household chores that are not personal cares in the first place, is found to be self-serving, convenient, uncorroborated by credible medical evidence or other evidence, and this testimony is not credible.

Based on the evidence in this record produced by Quality Assurance and i-Care, I conclude that 1.5 hours per day of PCW prior authorized services was correctly determined by i-Care, and this determination must be sustained.

CONCLUSIONS OF LAW

The Department and its agent have correctly authorized 1.5 hours per day of PCW services for the petitioner.

THEREFORE, it is ORDERED

The petitioner for review is 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 12th day of June, 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 June 12, 2014.

iCare
Division of Health Care Access and Accountability