



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

DECISION

MPA/158032

PRELIMINARY RECITALS

Pursuant to a petition filed May 28, 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 to modify a Medical Assistance (MA) authorization for personal care worker (PCW) services, a telephone hearing was held on July 14, 2014, at Wausau, Wisconsin.

The issue for determination is whether the OIG has correctly modified the petitioner’s prior authorization request for personal care worker (PCW) hours.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
[Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

|

Respondent:

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

Written Appearance by: Marcie Oakes, RN
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Marathon County.

2. On March 19, 2014, a prior authorization request was submitted on the petitioner's behalf for personal care worker services. Service was requested at the level of 126 units weekly, and 42 units per week travel time for the PCW for one year, beginning February 10, 2014. One unit equals 15 minutes of time. On May 2, 2014, the Division issued written notice to the petitioner advising that it would authorize a lower amount of units – 64 units of weekly PCW service.
3. The Division's basis for reduction of the requested hours was that the rejected units weekly are not needed to meet the petitioner's medical needs.
4. The petitioner, age 94, lives in the community with family. She has diagnoses of general weakness, hypertension, high cholesterol, and osteoporosis. Ambulation is indicated as a functional limitation, and activity is described as up as tolerated with a walker.
5. A state Personal Care Screening Tool (PCST) review was performed by a Certified Adult LTC Functional Screener for the petitioner on March 13, 2014. The PCST results declared that the petitioner required partial PCW assistance with bathing, upper and lower body dressing twice daily, eating, grooming twice daily, toileting care two times daily, and supervision with transfers.
6. The petitioner produced no corroborated evidence to establish that the Division's time allocations were incorrect.

DISCUSSION

Personal care worker service (PCW), as defined at Wis. Admin. Code §DHS 107.112(1), is an MA-covered service, subject to prior authorization after the first 250 hours per calendar year. Wis. Admin. Code §DHS 107.112(2). In determining whether to approve such a service request, the Division employs the generic prior authorization criteria found at §DHS 107.02(3)(e). Those criteria include the requirements that a service be a medical necessity, appropriate, and an effective use of available services. *Id.* The Division argues that the authorization criteria have not been satisfied as they do not meet the standard of medical necessity.

The Department asserts that it reduced the PCW time to the amount it believes is necessary to perform purely PCW tasks. The petitioner contends that she needs all of the requested care time.

The state code does restrict MA-covered PCW tasks as follows:

(b) Covered personal care services are:

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(2)(b).

At hearing, the petitioner's representative noted that petitioner has received PCW services since approximately 2002; until this year, the PCW services had been adequate to meet petitioner's needs. As petitioner has aged, her condition has not improved, and therefore, the representative argues, it is illogical to reduce the allotted PCW hours. The petitioner's representative testified that she needs 60 minutes for daily bathing, rather than the standard, allotted 30 minutes daily. The petitioner's representative asserts that she needs more than the allotted 30 minutes for this task because she has general weakness and tires easily. Unfortunately, this opinion of the representative is not supported by the documentation submitted with the PA request. See, Exhibit 3.

The reason that the DHCAA now is looking closely at PCW requests is evident in a case such as this one. Petitioner's grandson did not provide any corroboration for the estimated time necessary for providing the PCW services, but instead testified that more time was needed than the maximums because of petitioner's unique circumstances and needs. Nothing that was quantified was supported by anything other than his opinion. Without a better way to quantify the time for services, however, I find it difficult to add more time. An issue with family members being the personal care workers or assisting the care workers is that they may take more time to do care tasks due to extra carefulness or inexperience, and thus the Department has set maximum times for a typical care worker. In addition, while it is true that more hours were authorized in the past, it is likely that this request was the first one reviewed thoroughly by the respondent.

Petitioner's grandson should be aware that if petitioner's provider can show a medical need for more time, it can always request an amendment for additional time with evidence to show the need for the additional time. However, based upon the evidence before me at this time I cannot conclude that the reduction was wrong.

CONCLUSIONS OF LAW

The respondent correctly determined that the petitioner does not require more than 64 units of PCW services weekly for the one year period beginning February 10, 2014.

THEREFORE, it is

ORDERED

That the petition 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 22nd day of September, 2014.

\sPeter McCombs
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 September 22, 2014.

Division of Health Care Access and Accountability