



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/158694

PRELIMINARY RECITALS

Pursuant to a petition filed June 26, 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 August 07, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the Department of Health Services, Division of Health Care Access and Accountability (the agency) correctly denied the Petitioner's request for Personal Care (PCW) service hours.

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: OIG by letter

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. On January 29, 2014, Community Home Healthcare Inc., submitted, on behalf of the Petitioner, a request for prior authorization of 17.5 hours of PCW (Personal Care Worker) services per week for 53 weeks, with 24 additional hours to be used as needed. The request also asked for 7 hours per week of travel time for the PCW for 53 weeks, with a total cost of \$23,344.00 (Exhibit 5, attachment 2)

3. On February 14, 2014, Community Home Healthcare Inc., submitted, on behalf of the Petitioner a request for prior authorization of 26.25 hours of PCW services per week for 53 weeks, with 24 additional hours to be used as needed. The request also asked for 7 hours per week of travel time for the PCW for 53 weeks, with a total cost of \$35,937.75, (Exhibit 5, attachment 1)
4. On February 24, 2014, Community Home Healthcare Inc., submitted, on behalf of the Petitioner a request for prior authorization of 31.5 hours of PCW services per week for 53 weeks, with 24 additional hours to be used as needed. The request also asked for 7 hours per week of travel time for the PCW for 53 weeks, with a total cost of \$41,737.50. (Exhibit 5, attachment 3)
5. The Personal Care Screening Tool was updated with each new prior authorization request, but still reflected a February 12, 2014 date of completion. (Exhibit 5, attachments 5, 6 and 7)
6. The Home Health Certification and Plan of Care, signed by a Dr. [REDACTED] on March 3, 2014, prescribes 2.4 hours per day/17.5 hours per week of PCW service hours. (Exhibit 5, attachment 4)
7. On March 24, 2014, the Department of Health Services (the agency) sent Community Home Health Care a letter requesting additional information. Specifically, the agency asked Community Home Healthcare to, "provide additional information to justify PCW services. Please submit the MD signed and dated plan of care/orders for PCW services. Submit last 2 most recent MD office visit notes. Submit last MD visit note from psychiatrist/psychologist. Why was a new PCST completed? Noted changes to toileting and transfers. What change in condition occurred? Please address all of the above and resubmit." (Exhibit 5, attachment 8)
8. On a date not made clear in the record, the Department of Health Services (the agency) notified the Petitioner that the request for services was denied. (Exhibit 5, pg. 1)
9. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on June 26, 2014. (Exhibit 1)

DISCUSSION

Personal Care Services are a covered service by Medicaid. They are defined as, "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. These services shall be provided upon written orders of a physician by a provider certified under s. DHS 105.17 and by a personal care worker employed by the provider or under contract to the provider who is supervised by a registered nurse according to a written plan of care." *Wis. Admin. Code DHS §107.112(1)(a)*.

Prior authorization is required for personal care services in excess of 250 hours per calendar year and for home health services covered under *Wis. Admin. Code DHS §107.11(2)*, that are needed to treat a recipient's medical condition or to maintain a recipient's health. *Wis. Admin. Code DHS §107.112(b)*

The Department of Health Services requires prior authorization of certain services to:

1. Safeguard against unnecessary or inappropriate care and services;
2. Safeguard against excess payments;
3. Assess the quality and timeliness of services;
4. Determine if less expensive alternative care, services or supplies are usable;
5. Promote the most effective and appropriate use of available services and facilities; and
6. Curtail misutilization practices of providers and recipients.

Wis. Admin. Code § DHS107.02(3)(b)

"In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;

3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including Medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.”

Wis. Admin. Code §DHS107.02(3)(e)

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;
 7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Adm. Code. §DHS 101.03(96m)

Petitioner has the burden to prove, by a preponderance of the credible evidence, that the requested services meet the approval criteria.

In determining how many hours of personal care services an individual is allowed, a service provider, in this case, Community Home Healthcare, Inc., completes a personal care screening tool (PCST). A link to the blank form can be found in the on-line provider handbook located on the Forward Health website: <https://www.forwardhealth.wi.gov/WIPortal>, under topic number 3165. The responses are then entered into a web-based PCST, which cross references the information with the Personal Care Activity Time Allocation Table.

The Personal Care Activity Time Allocation Table is a guideline showing the maximum allowable time for each activity. *On-Line Provider Handbook Topic #3165.*

This chart can also be found at the aforementioned website.

In general, seven activities of daily living (ADLs) are reviewed: 1) Bathing, 2) Dressing, 3) Grooming, 4) Eating, 5) Mobility, 6) Toileting, and 7) Transfers. In addition, Medically Oriented Tasks (MOTs), such as application of an ACE bandage, are also examined.

The letter from the Office of the Inspector General indicated that the agency denied the request for PCW services, because Community Home Healthcare did not provide sufficient explanation for the changes in the personal care screening tool. The letter from the Office of Inspector General further states that while the agency does not dispute the fact that the Petitioner lives with chronic pain, Petitioner's medical documentation does not support a finding that she is incapable of safely completing her activities of daily living.

The agency cites Petitioner's medical records from a February 5, 2014 doctor's appointment, at which she was being seen for a complaint of eye injury. At that appointment it was noticed that the Petitioner had, "no clubbing, cyanosis, edema, or deformity noted with normal full range of motion of all joints." (Exhibit 5, attachment 9, pg. 3) In addition, the Petitioner's neurologic exam shows, "station and gait normal, normal tandem walk. Romberg negative [for balance issues], strength symmetrical and normal, rapid alternating movements normal, normal, symmetrical DTR's, sensation symmetrical and intact..." (Id.)

Reviewing the record, it does not appear that Community Home Health Care provided a satisfactory explanation for why the personal care screening tool kept changing and increasing the number of hours of PCW services being requested.

The February 5, 2014, medical record supports the agency's contention that the Petitioner does not have any significant limitations in her range of motion or strength that would prevent her from completing her activities of daily living.

The Petitioner submitted additional medical records, but most pre-date the February 5, 2014 examination. The Petitioner submitted a letter from Dr. Christopher [REDACTED] dated July 31, 2014, indicating that she needs assistance with "bathing, cleaning, transportation, etc." due to her poorly managed chronic pain issues. However, this is contradicted by the Home Health Certification and Plan of Care signed by Dr. [REDACTED] on March 3, 2014, stating that the Petitioner, "verbalizes analgesic effectively reduces pain or maintains comfort with ½ hour of administration." (Exhibit 5, attachment 4)

It should be noted that the March 3, 2014 Home Health Certification and Plan of Care only prescribed 17.5 hours of PCW services, even though the most recent prior authorization request for PCW Services, requested 31.5 hours per week of services.

Given the conflicting information in Petitioner's medical records and the prior authorization requests, it is found that the Petitioner has not met her burden to show that the requested services meet the approval criteria.

Petitioner should note that if her condition changes or if she has more recent medical documentation that clearly describes her abilities / disabilities, Community Home Healthcare Inc., or another provider of her choice, can always submit a new request for PCW time on her behalf.

CONCLUSIONS OF LAW

The agency correctly denied Petitioner's January and February 2014 requests for PCW services.

THEREFORE, it is **ORDERED**

That the petition 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 9th day of September, 2014.

\sMayumi M. Ishii
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 9, 2014.

Division of Health Care Access and Accountability