



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/158859

PRELIMINARY RECITALS

Pursuant to a petition filed July 05, 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 12, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly denied the Petitioner's request for personal care worker (PCW) services.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Kelly Townsend

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. Petitioner lives with his family and regularly attends scheduled activities outside his residence 2 days/week.

2. Petitioner's diagnoses include: lumbago, osteoarthritis, diabetes, neuropathy, nerve damage, hypertension and high cholesterol.
3. On February 23, 2014, an assessment of the Petitioner was completed using the Personal Care Screening Tool (PCST). The evaluator assessed the Petitioner's needs as follows:
 - Bathing – Level D – Petitioner needs help washing hard to reach areas; he cannot twist or bend at the waist.
 - Dressing – Level D – Petitioner has difficulty lifting arms overhead and twisting at waist due to back pain and stiffness; cannot bend at the waist to put on pants, shoes and socks due to back pain.
 - Grooming – Level D – Petitioner cannot stand for long periods of time due to back pain; needs help shaving, washing hair and face, filing toenails; cannot bend to reach feet.
 - Eating – Level A
 - Mobility – Level A
 - Toileting – Level D – Petitioner needs help with pericare, transfers on/off toilet and changing clothing with incontinence due to back pain and inability to twist to reach and clean properly.
 - Transferring – Level D – Petitioner feels a pulling down the back of his legs that causes instability and requires help with transfers to prevent falling.

The PCST also notes that the Petitioner has physical therapy 2x/week and needs cares done at a slow pace due to severe back pain.
4. On February 26, 2014, the Petitioner's provider, Preferred Home Health Services, submitted a PA request on the Petitioner's behalf requesting 19 hours/week of PCW services.
5. Physician notes were submitted at the request of the agency for February 18, 2014, February 26, 2014, March 4, 2014, March 14, 2014 and April 14, 2014. On February 18, 2014, the Petitioner reported increasing back pain. On February 26, March 14 and April 14, 2014, the notes indicate Petitioner is not in acute distress. On all dates of examination, an assessment of the Petitioner's back indicates no tenderness of the cervical and dorsal spine with mild-moderate tenderness to the lumbar spine. Motor strength and tone was normal. Gait was noted to be normal. Pain in his back was reported to be moderately controlled. On March 4, 2014, there was no report of back pain.
6. On May 22, 2014, the agency denied the PA request for PCW services.
7. On July 5, 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, or one-fourth when the recipient lives with family. 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 are required by the DHCAA to 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.

The agency bases its denial of PCW services on the physician notes for February, March and April, 2014. It contends that the physician assessments of the Petitioner's functional capabilities do not support the necessity of PCW services. It asserts that there has been no evaluation of whether the Petitioner can maintain his independence with ADLs with proper adaptive equipment. It notes that the agency request physical therapy notes. The Petitioner's provider did submit PT progress notes. The notes are not comprehensive and are inconsistent with the physician assessments of the Petitioner.

The Petitioner appeared at the hearing and described the difficulties that he has with ADLs. His testimony was consistent with the findings on the PCST.

Without additional evidence, I must conclude that the agency properly denied the PCW services at this time. The physician assessments and physical therapist notes are inconsistent with regard to the Petitioner's functional capabilities. As noted by the agency, there is no evaluation of the ability of the Petitioner to perform ADLs independently with the use of adaptive equipment. It may be that additional assessments and evidence can be developed that may demonstrate Petitioner's need for assistance but with the evidence presented at this time, I conclude the agency properly denied the PCW services.

CONCLUSIONS OF LAW

The agency properly denied the PA 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 16th day of September, 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 September 16, 2014.

Division of Health Care Access and Accountability