



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/159395

PRELIMINARY RECITALS

Pursuant to a petition filed July 24, 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 November 20, 2014, at Milwaukee, Wisconsin. This case was rescheduled twice as Petitioner has not had a reliable phone

The issue for determination is whether Petitioner has submitted evidence sufficient to demonstrate that additional personal care worker (PCW) hours may be paid for by the Medicaid program.

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: 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:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. A prior authorization (PA) request seeking Medicaid payment for 21.00 hours (or 84 units with each unit = 15 minutes) per week of personal care services, 7 hours or 28 units for PCW travel time and 24

hours or 96 units of as needed services (PRN) was filed on behalf of Petitioner on or about April 21, 2014. The total cost was noted to be \$28,981.50. The requesting provider is Community Home Health Care. The request was for 53 weeks commencing April 18, 2014.

3. Petitioner is 52 years of age (██████████). The PA notes her diagnoses as arthritis and chronic pain. She is also noted to have bilateral knee pain, chronic low back Pain and degenerative joint pain in her left ankle. She does use a cane and has leg braces. Per Petitioner's testimony she is participating in physical therapy. Her caregiver does not live with Petitioner but is about 1.25 miles away – about 3 minutes of travel time per MapQuest.
4. This PA for PCW services was approved with modification by the Department. The travel time was not approved as Petitioner's caregiver was noted to live about a mile away. The PRN services were not approved as the provider did not complete that portion of the prior authorization request. The Department also noted that the physician order included with the Petitioner only asked for 2 hours of PCW services per day. The weekly PCW hours were approved as follows for six months (per Ex # 3 at pages 2, 7 and 8):

- | | |
|--|------------|
| • Bathing | 210 min/wk |
| • Grooming | 105 min/wk |
| • Services incidental to these tasks
(1/3 of above total) | 105 min/wk |

Total with rounding: 420 min week = 1 hour per day = 28 units per week

The Department also suggested that Petitioner could benefit from use of adaptive equipment and physical therapy.

DISCUSSION

When determining whether to approve any medical service, the OIG must consider the generic prior authorization review criteria listed at *Wis. Admin. Code, § DHS 107.02(3) (e)*:

(e) *Departmental review criteria.* 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.

“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. Admin. Code, §DHS 101.03(96m).

Also, the following Administrative Code provision is relevant here:

DHS 107.112 Personal care services. (1) COVERED SERVICES. (a) 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. 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. The personal care worker shall be assigned by the supervising registered nurse to specific recipients to do specific tasks for those recipients for which the personal care worker has been trained. The personal care worker's training for these specific tasks shall be assured by the supervising registered nurse. The personal care worker is limited to performing only those tasks and services as assigned for each recipient and for which he or she has been specifically trained.

(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(1)(a) and (b).

I note at this point that the Petitioner has the burden of proving that the requested therapy meets the approval criteria and that the standard level of proof applicable is a “preponderance of the evidence”. This legal standard of review means, simply, that “it is more likely than not” that Petitioner and/or his/her representatives have demonstrated that the requested services meet the criteria necessary for payment by the Wisconsin Medicaid program. It is the lowest legal standard in use in courts or tribunals.

The Department provided a letter (Ex # 3) that detailed its rationale for modifying this request for personal care services. It need not be reproduced here. The Department approved 1 hour per day of PCW services for six months to give the provider time to order additional medical equipment and to reassess Petitioner after physical and/or occupational therapy.

Petitioner testified that she needs additional time for help with a TENS unit, to assist with socks and shoes and medication reminders as needed. She indicated that she is able to eat, transfer and toilet on her own. This is at odds with the PA that indicates Petitioner cannot toilet on her own or transfer well.

By the time of the hearing, the six months of authorized PCW services had expired. I am declining to extend it. There are too many discrepancies between the provider information, Petitioner’s clinical notes from physician visits, and Petitioner’s own testimony. Additionally, the physician request for 2 hours contradicts the provider request for 3 hours per day.

Petitioner may certainly ask this provider or any other provider to submit a new prior authorization request on her behalf.

Also there are possibly other types of assistance that might be available to Petitioner via the Family Care and/or IRIS programs. Petitioner may want to explore these programs for assistance, again, the Family Care program and the Include, Respect, I Self Direct (IRIS) program. The starting point for learning more about these programs is to contact the Milwaukee County Disability Resource Center:

How do I Contact the Disability Resource Center?

Call 414-289-6660

Fax 414-289-8522

Telecommunication Relay Service (TRS): 711

E-mail: DSD@milwcnty.com

Website: www.county.milwaukee.gov/DSD.htm

NOTE: The provider will not receive a copy of this Decision. In order to have the personal care services involved here approved, the Petitioner must provide a copy of this Decision to the provider. The provider must then submit a new prior authorization request to receive the approved coverage.

CONCLUSIONS OF LAW

That the evidence offered on behalf of Petitioner is not sufficient to demonstrate that personal care worker service hours can be extended.

THEREFORE, it is

ORDERED

That this appeal 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 Milwaukee,
Wisconsin, this 15th day of December, 2014

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on December 15, 2014.

Division of Health Care Access and Accountability