



FH

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

In the Matter of:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/159416

PRELIMINARY RECITALS

Pursuant to a petition filed July 29, 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 ["DCHAA"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on September 3, 2014.

The issue for determination is whether it was correct to modify Prior Authorization ["PA"] # [REDACTED] which requested 49 hours (196 units) per week of Personal Care Worker ["PCW"] services plus 3.5 hours (14 units) per week of PCW travel time.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Robert Derendinger, RN, BSN, Nurse Consultant
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (51 years old) is a resident of Milwaukee County, Wisconsin.
2. Petitioner lives alone; the *Home Health Certification and Plan of Care* lists the following diagnosis: generalized seizures; stroke; and, shoulder pain; on the *Home Health Certification and Plan of Care* the following functional limitation boxes are checked: bowel/bladder (incontinence); endurance; and, ambulation; on the *Home Health Certification and Plan of Care* the following mental status boxes are checked: oriented; forgetful; and, other (anxiety). Attachment #2.
3. On May 5, 2014 petitioner's provider, TLC Personal Care Agency of Milwaukee, Wisconsin, filed PA # [REDACTED] dated May 1, 2014 with DCHAA requesting 49 hours (196 units) per week of PCW services plus 3.5 hours (14 units) per week of PCW travel time for 53 weeks with a requested start date of May 1, 2014 at a total cost of \$222,600. Attachment #1.
4. DCHAA modified PA # [REDACTED] by granting 12.5 hours (50 units) per week of PCW services (instead of the 49 hours that was requested) and 3.5 hours (14 units) per week of PCW travel time.
5. Petitioner's PCW service needs were assessed by a *Personal Care Screening Tool* ["PCST"] completed by a Registered Nurse ["RN"] on May 1, 2014; 2 copies of the PCST are part of the record of this matter; one copy concluded that petitioner needs 49 hours (196 units) per week of PCW services; the second copy concluded that petitioner needs 39 hours (156 units) per week of PCW services; no explanation was provided for this discrepancy; the PCST states that petitioner had a history of falls and seizures, problem with memory, unstable gait, weak right side (cannot button pants and tops or tie shoes), has legs that give out and appear weak, and cries and becomes upset easily. Attachments #3 & #11.
6. The May 1, 2014 PCST found that petitioner needed help with the following: bathing (partial physical assistance of another; needs help in and out of shower); dress upper & lower body (partial physical assistance of another); grooming (partial physical assistance of another); eating (physical assistance with set up // feeds self but requires intermittent supervision or cueing); mobility (needs physical help from another person); toileting (needs physical help from another person); transferring (needs physical help from another person); medication assistance (needs physical help from another person). Attachments #3 & #11.
7. On June 3, 2013 DCHAA requested additional medical documentation from petitioner to verify the need for the requested PCW services; no additional medical documentation was ever provided; petitioner did provide a note that stated, in part, that petitioner "is able to feed self, does not require a specialized setup for meals." Attachments #4 & #5.
8. Petitioner's medical records from February 2013 and July 2013 state that petitioner: has a history of seizures in the remote past about 5 or 6 years ago (although she had a nocturnal generalized convulsive seizure on January 6, 2013); does not take her seizure medication as she has not had seizures for about 5 years; has a gait that is normal and is able to walk tandem; has right upper extremity pain that radiates down to her right hand and has trouble even picking things up; has severe depression for which she take medication; has mild chronic tension headaches; and, is overweight.

DISCUSSION

By law, MA pays only for medically necessary and appropriate health care services when provided to currently eligible MA recipients. Wis. Admin. Code § DHS 107.01(1) (February 2014); See also, Wis.

Stat. §§ 49.46(2) & 49.47(6)(a) (2011-12). In the case of PCW services, MA pays only for 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) (February 2014). Further, some medically oriented tasks may be covered as PCW services if the PCW has received special training in performing the task. Wis. Admin. Code §§ DHS 107.112(2)(b) & 107.11(2)(b)1. (February 2014). PCW services must be performed according to a written plan of care developed by an RN. The plan must be based on the RN's visit to the recipient's home and must be reviewed by the RN at least every 60 days via a home visit. Wis. Admin. Code §§ DHS 107.112(3)(b) & (c) (February 2014).

In addition to the medically oriented tasks allowed for PCW's that have received special training, the only PCW services covered are 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(1)(b) & (4)(f) (February 2014).

As with any eligibility denial, the burden is on petitioner to show that he is eligible for the requested services. *Lavine v. Milne*, 424 U.S. 577, 583-584 (1976). Petitioner has failed to do so.

In this case a standard PCST was completed. However, as reflected in the above *Findings of Fact*, the 2 copies of the PCST are not consistent -- one copy concluded that petitioner needs 49 hours per week of PCW services and the second copy concluded that petitioner needs 39 hours per week of PCW services. No explanation was provided for this discrepancy. Further, the amount of PCW services requested by petitioner is not supported by her condition as reflected in the February 2013 and July 2013 medical documentation that is part of the record of this matter (for instance, the medical documentation does not establish that petitioner has incontinence). It is true that the medical documentation is over 1 year old -- but DCHAA requested additional medical documentation and none was ever provided.

DCHAA based its determination to grant only 12.5 hours per week (plus 3.5 hours per week of PCW travel time) on its evaluation of the PCST, the medical documentation that a part of the record of this matter, and the use of the *Personal Care Activity Time Allocation Table*. Attachments #3, #6, #7, #8 & #11. In the absence of additional medical evidence, and in light of the PCST's inconsistency with itself and with the medical documentation that is part of the record of this matter, DCHAA's determination must be affirmed.

Petitioner may, if she wishes, have her provider file another PA request along with additional medical documentation.

CONCLUSIONS OF LAW

For the reasons explained above, DCHAA was correct to modify PA # [REDACTED] which requested 49 hours (196 units) per week of PCW services plus 3.5 hours (14 units) per week of PCW travel time.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby 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 25th day of September, 2014

\sSean P. Maloney
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 September 25, 2014.

Division of Health Care Access and Accountability