



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redacted case name

DECISION

MPA/159471

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 in regard to Medical Assistance, a hearing was held on September 24, 2014, at Madison, Wisconsin.

The petitioner is a 31 year old man who represented himself during the hearing. During that hearing, petitioner requested that the record be held open for documents to be submitted to the Division of Hearings and Appeals, and then for those documents to be sent to the Office of the Inspector General (OIG) for a reconsideration decision with an opportunity for a reply by Mr. Redacted.

This Administrative Law Judge (ALJ) sent an October 12, 2014 cover letter to Mr. Redacted at the Office of the Inspector General (OIG) with a copy of the one document which was received at DHA: an October 5, 2014 letter by the petitioner, Mr. Redacted. In that same letter, this ALJ requested that Mr. Redacted review the enclosed letter, and submit a reconsideration summary to me at the Division of Hearings and Appeals by October 22, 2014 with a copy of that reconsideration summary letter to be sent to the petitioner. The petitioner requested and was granted until November 3, 2014 to submit to DHA any response Mr. Redacted's reconsideration summary.

Mr. Redacted timely submitted his well-organized, detailed reconsideration to DHA and to the petitioner. See Exhibit A. The petitioner did not submit any response to DHA by November 3, 2014 or even by the date of this decision.

The issue for determination is whether the Department correctly modified (reduced) the petitioner's prior authorization (PA) request for personal care worker (PCW) services from 70 to 55 hours per week, and then approved the 55 hours per week plus 3.5 hours of PCW travel time.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redacted petitioner name

Respondent:

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

By: Robert Redact, RN, nurse consultant
Office of the Inspector General (OIG)
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 31 year old resident of Dane County who lives with a paid caregiver.
2. The petitioner is diagnosed with quadriplegic paralysis.
3. On or about May 22, 2013, petitioner received a highly customized power wheelchair with specialized chin cup joystick with enhanced steering control (which enables petitioner to independently control the wheelchair). The wheelchair has powered positioning (tilt, recline, and elevating center mount leg rests) so that he is able to control through his chin control with approved electronic control module on the power wheelchair – and thus can often re-position himself. The wheelchair has items to prevent his hands, arms and feet from falling (channeled arm troughs, lateral thigh supports, and toe loops). See Exhibit 1, Attachment 10.
4. On or about June 25, 2014, the petitioner's provider, Community Living Alliance, requested prior authorization (PA) for MA coverage of personal care worker (PCW) hours of 70 hours per week with 3.5 hours per week for PCW travel time. See Exhibit 2.
5. The petitioner's Personal Care Screening Tool (PCST) was completed by screener Becky Pearson, RN from Community Living Alliance, on May 20, 2014 at petitioner's home. See Exhibit 1. In that PCST, the screener generally evaluated the petitioner's needs for assistance with bathing, dressing and undressing, placement of his anti-embolism stockings (TEDS), and an abdominal binder. Petitioner needs total feeding from another person for all three meals daily. Regarding toileting, petitioner needs emptying of his ostomy or catheter bag 6 times per day, and incontinence care. Petitioner needs help with the use of a Hoyer lift for transfers.
6. Based upon his Personal Care Activity Time Allocation Table and his PCST, the petitioner was approved for the following reduced amount of 55 hours of PCW services per week: a) Bathing – 210 minutes per week; b) Dressing of upper and lower body – 280 minutes per week; c) TED Hose and brace application – 70 minutes per week; d) Grooming (twice daily) 210 per week; e) Eating Assistance – 420 minutes per week (20 minutes for 3 times daily); f) Mobility – 0 minutes per week because Liam is generally independent with mobility because he is independent with his high customized wheelchair (Finding of Fact #3 above) g) Incontinence – 105 minutes per week; h) Catheter Bag emptying – 6 times per day at 210 minutes per week; i) Suprapubic catheter site care – 70 minutes per week; j) Complex positioning – 210 minutes per week – the petitioner needs positioning about 10 times per day, but petitioner has powered positioning (tilt, recline, and elevating center mount leg rest) that he is able to control through his chin control with approved electronic control module on the power wheelchair – thus can often usually re-position himself; k) Bowel program – 120 minutes per week; l) Hoyer transfers – 420 minutes per week (15 minutes per transfer 4 times per day); m) Range of Motion twice daily – 280 minutes per week;

and n) Services Incidental task – 651 minutes per week for ADLs and Medically Oriented Services (MOT). The petitioner’s total ADL and MOT were 55 hours per week.

7. On review of the PA Request, the Office of the Inspector General (OIG) modified the prior authorization request from the requested 70 to 44.00 PCW hours per week based upon the Personal Cares Screening Tool (PCST) assessing the petitioner’s PCW needs and further investigation of that assessment, based upon Finding of Fact #3 - #6 above.
8. OIG issued a letter Notice to the petitioner’s representative informing her that petitioner’s PA requested personal care worker services had been reduced from 70 to 55 hours per week, and then approved as modified.
9. While the record was held open, petitioner submitted to DHA and OIG his one page October 5, 2014 letter. See above Preliminary Recitals.
10. In his well-organized, detailed and persuasive reconsideration to DHA, OIG’s nurse consultant **Redact** responded point by point to the petitioner’s October 5th letter, and established that petitioner has not provided any reliable, specific evidence or documentation that petitioner needs more than 55 hours per week of PCW services. See Exhibit A.
11. The petitioner did not submit any response to OIG’s closing argument by November 3, 2014 or even by the date of this decision. See above Preliminary Recitals.

DISCUSSION

The Office of the Inspector General (OIG) may only reimburse providers for medically necessary and appropriate health care services and equipment listed in Wis. Stat. §§ 49.46(2) and 49.47(6)(a), as implemented by Wis. Admin. Code Ch. DHS 107. Some services and equipment are covered if a prior authorization request is submitted and approved by the Division in advance of receiving the service. Finally, some services and equipment are never covered by the MA program.

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 place of residence in the community. Wis. Admin. Code § DHS 107.112(1)(a). **Covered PCW services include only 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).

Further, PCW services must be provided according to a written plan of care that is based on an evaluation made by an RN who has visited the recipient's home. Wis. Admin. Code §§ DHS 107.112(1)(a) & (3)(b).

During the September 24, 2014 hearing, the petitioner's asserted he needed more than the 55 hours per week of PCW hours approved by OIG. In his October 5, 2014 letter, petitioner alleged there were 6 areas where he contended he needed more PCW time. Mr. [Redact] in a very organized fashion persuasively addressed each of those allegations: 1) Dressing – petitioner alleged that time for “undressing” was not taken into account. However, OIG correctly responded that PCW time for dressing includes time for both dressing and undressing per PCST Completion Instructions; 2) TED Hose – petitioner alleged that removal of TED socks was not taken into account. OIG responded correctly petitioner's PCW hours include 10 minutes per day for putting on and taking off his TED hose; 3) Eating Assistance and Meal Preparation – OIG included PCW time for Eating Assistance of 60 minutes per day, and Meal Preparation which was included in the 651 minutes per week for services incidental to tasks; 4) Mobility – assistance to turn lights on and off and turn on TV or open a door - OIG responded that “mobility” does not include home lighting, entertainment or opening doors especially as petitioner is able to independently use his power wheelchair once seated and positioned; 5) Catheter bag – petitioner misunderstood and did not realize that the approved PCW hours includes catheter bag emptying a total of six time per day; and 6) Complex Positioning – petitioner explained his hand, arms and feet frequently fall of the rests, requiring repositioning. OIG correctly responded that the custom wheelchair includes items to prevent his hands, arms and feet from falling (channeled arm troughs, lateral thigh supports, and toe loops). See Exhibit 1, Attachment 10. See Findings of Fact #3 and #6 above, and Exhibit A.

As a result, petitioner was unable to specifically indicate any area where the approved 55 hours of PCW hours was insufficient to meet the petitioner's PCW needs in any of the above 13 covered PCW services. Petitioner's submitted documentation did not support any specific need for the petitioner's PCW hours to be increased above 55 hours per week. In OIG's September 3, 2014 denial summary with Attachments, OIG nurse consultant, Robert [Redact], provided specific evidence and documentation to establish that the above 13 covered PCW services could be completed for petitioner in the reduced amount of 55.0 hours of PCW hours each week for the petitioner. See Finding of Fact #6 and #10 above. Furthermore, while the hearing record was held open, OIG submitted its persuasive closing argument to establish that the approved 55 PCW hours was adequate to meet the petitioner's medically necessary needs. See Exhibit A. The petitioner's representative did not submit any response to OIG's closing argument. See above Preliminary Recitals.

The petitioner was unable to refute the Department's persuasive written arguments and exhibits. Furthermore, petitioner was unable to establish that he has any covered PCW needs that are not being met by the 55.0 PCW hours approved by the Department. Accordingly, based upon review of the entire hearing record, I conclude that the Department correctly modified (reduced) the petitioner's prior authorization (PA) for personal care worker (PCW) services from 70 to 55 hours per week, and then approved the 55 hours per week plus 3.5 hours of PCW travel time.

CONCLUSIONS OF LAW

The Department correctly modified (reduced) the petitioner's prior authorization (PA) for personal care worker (PCW) services from 70 to 55 hours per week, and then approved the 55 hours per week plus 3.5 hours of PCW travel time.

THEREFORE, it is ORDERED

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 23rd day of December, 2014

\sGary M. Wolkstein
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 23, 2014.

Division of Health Care Access and Accountability