



FH
[REDACTED]

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

In the Matter of:

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

DECISION

MPA/159589

PRELIMINARY RECITALS

Pursuant to a petition filed August 2, 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 October 16, 2014. At petitioner’s request a Hearing scheduled for September 30, 2014 was rescheduled.

The issue for determination is whether DCHAA was correct to deny Prior Authorization [“PA”] # [REDACTED] for [REDACTED] [“PCC”] for petitioner.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED] (not present at October 16,
2014 Hearing)
[REDACTED]
[REDACTED]
[REDACTED]

Represented by:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Kelly Townsend, RN, BSN [Ms. Townsend did not appear at the October 16, 2014 Hearing but submitted a letter dated August 25, 2014 with attachments.]
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 (CARES # [REDACTED]; 7 years old) is a resident of Milwaukee County, Wisconsin.
2. Petitioner has diagnosis of encephalopathy, spastic quadriplegic, birth depression/trauma, seizure disorder, circumcision, developmental delay, GERD, reactive airway disease, feeding disorder (he has a G-J tube for feeding), and spasticity.
3. Petitioner's provider, Milwaukee Center for Independence of Milwaukee, Wisconsin, filed PA # [REDACTED] dated May 14, 2014 with DCHAA requesting [REDACTED] ["PCC"] for petitioner up to 10 hours per day 6 days per week for 52 weeks per year starting May 17, 2014 at a total cost of \$312,000.00.
4. DCHAA denied PA # [REDACTED] for PCC for petitioner; DCHAA sent a letter to petitioner dated June 20, 2012 and entitled *BadgerCare Plus Notice of Appeal Rights* informing petitioner of this denial.
5. The PCC requested by petitioner is skilled nursing care to be provided outside of his home.
6. The evidence in the record of this matter is that petitioner has a complicated medical history with past instabilities but that his current needs do not require at least 8 hours per calendar day of skilled nursing care; the evidence is that most of petitioner's needs can be met by the services of a Home Health Aide ["HHA"] and/or a Personal Care Worker ["PCW"] (petitioner has been approved for 37 hours per week of PCW services).

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) (May 2009); See also, Wis. Stat. §§ 49.46(2) & 49.47(6)(a) (2011-12). PCC is child care, provided outside of petitioner's home, with skilled nursing and specialized staff. PCC is services provided in a day care setting for children, ages 0-20, with complex medical needs who reside at home and require at least 8 hours per calendar day of skilled nursing care. *Wisconsin Medicaid Pediatric Community Care (PCC) Services* for effective dates of service on and after May 1, 2010 (found as attachment #2 to DCHAA August 25, 2104 letter). Only a recipient who requires 8 or more hours of skilled nursing care and is authorized to receive those services in the home setting may make use of the approved hours outside of that setting. Wis. Admin. Code § DHS 107.12(1)(a) (May 2009).

"Skilled nursing services" means those professional nursing services furnished pursuant to a physician's orders which require the skills of a registered nurse or licensed practical nurse and which are provided either directly by or under the supervision of the registered nurse or licensed practical nurse.

Note: Examples of services which would qualify as skilled nursing services are:

- (a) Intravenous, intramuscular, or subcutaneous injections and hypodermoclysis or intravenous feeding;
- (b) Levin tube and gastrostomy feedings;
- (c) Nasopharyngeal and tracheotomy aspiration;
- (d) Insertion and sterile irrigation and replacement of catheters;
- (e) Application of dressings involving prescription medications and aseptic techniques;

- (f) Treatment of extensive decubitus ulcers or other widespread skin disorder;
- (g) Heat treatments which have been specifically ordered by a physician as part of active treatment and which require observation by nurses to adequately evaluate the patient's progress;
- (h) Initial phases of a regimen involving administration of medical gases; and
- (i) Rehabilitation nursing procedures, including the related teachings and adaptive aspects of nursing that are part of active treatment, e.g., the institution and supervision of bowel and bladder training programs.”

Wis. Admin. Code § DHS 101.03(163) (December 2008).

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. As noted in the above *Findings of Fact*, based on the evidence in the record of this matter it cannot be concluded that petitioner requires at least 8 hours per calendar day of skilled nursing care.

Petitioner argues that he “Requires, continuous skilled nursing care in my [his father’s] absence for a minimum of 10-12 hours per day.” However, the documentation in the record of this matter does not support this.

CONCLUSIONS OF LAW

For the reasons explained above, DCHAA was correct to deny PA # [REDACTED] for PCC for petitioner.

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 21st day of October, 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 October 21, 2014.

Division of Health Care Access and Accountability