



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of

[Redacted]

DECISION

MPA/159818

**PRELIMINARY RECITALS**

Pursuant to a petition filed August 09, 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 n/k/a the Office of the Inspector General (OIG), in regard to Medical Assistance (MA), a telephonic hearing was held on October 07, 2014.

The issue for determination is whether the OIG correctly modified the personal care worker (PCW) hours requested for petitioner pursuant to her prior authorization (PA) request.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[Redacted]

Respondent:

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

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

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County.

2. On June 18, 2014, petitioner's PCW provider, Community Home Health Care, requested prior authorization for 26.25 hours per week of PCW services for petitioner, as well as 24 hours per year of PRN time (PA # [REDACTED]) starting on June 26, 2014.
3. By a notice dated July 28, 2014, the OIG modified the PA request allowing 8.75 hours weekly of PCW time.

### DISCUSSION

MA coverage of PCW services is described in the Wis. Adm. Code, §DHS 107.112. Covered services are specified in subsection (1), and are defined generally as "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." Examples of covered services are assistance with bathing, with getting in and out of bed, with mobility and ambulating, with dressing and undressing, and meal preparation. In determining the number of PCW hours to authorize the OIG uses that standard along with the general medical necessity standard found at Wis. Adm. Code, §DHS 101.03(96m). It provides:

"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).

To determine the number of PCW hours to authorize the OIG uses the Personal Care Screening Tool, a computer program it believes will allow it 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 OIG's reviewer can then adjust to account for variables missing from the screening tool's calculations.

The OIG denied the PA because it determined that the documentation submitted with it did not support the medical necessity of the hours requested. In reviewing the information submitted by the provider, I can see how the OIG was unable to determine that all of the requested PCW services were medically necessary. The information submitted does not show that the petitioner's doctor ordered PRN time and the clinical information showed that petitioner had no reported falls and that her gait was normal.

The petitioner was at the hearing and testified to her limitations. Her testimony related to a knee replacement on July 15, 2014 and falls in July and September 2014. The problem however relates to the fact that the medical necessity for the PCW cares is not documented pursuant to MA rules and policy, which provide:

**(3) OTHER LIMITATIONS.**

**(a)** Personal care services shall be performed under the supervision of a registered nurse by a personal care worker who meets the requirements of s. DHS 105.17 (3) and who is employed by or is under contract to a provider certified under s. DHS 105.17.

**(b)** Services shall be performed according to a written plan of care for the recipient developed by a registered nurse for purposes of providing necessary and appropriate services, allowing appropriate assignment of a personal care worker and setting standards for personal care activities, giving full consideration to the recipient's preferences for service arrangements and choice of personal care workers. The plan shall be based on the registered nurse's visit to the recipient's home and shall include:

1. Review and interpretation of the physician's orders;
2. Frequency and anticipated duration of service;
3. Evaluation of the recipient's needs and preferences; and
4. Assessment of the recipient's social and physical environment, including family involvement, living conditions, the recipient's level of functioning and any pertinent cultural factors such as language.

**(c)** Review of the plan of care, evaluation of the recipient's condition and supervisory review of the personal care worker shall be made by a registered nurse at least every 60 days. The review shall include a visit to the recipient's home, review of the personal care worker's daily written record and discussion with the physician of any necessary changes in the plan of care.

See Wis. Adm. Code §DHS 107.112(3)(a)-(c).

In sum, there are no physician or clinical notes to support the need for the requested services as the petitioner describes now. When prior authorization is requested, it is the provider's responsibility to justify the need for the service. Wis. Adm. Code, §DHS 107.02(3)(d)6 (emphasis added). There is no question that the rules require doctor's orders to verify that the PCW services are so authorized. One such rule specifically states that PCW services "shall be provided upon written orders of a physician." See Wis. Adm. Code §DHS 107.112(1)(a); see also Wis. Adm. Code, §DHS 107.02(2m)(a)19. The terms and conditions under which providers of health care services are certified for participation in the MA program also *require* that the RN supervisor secure written orders from the client's physician. See Wis. Adm. Code §DHS 105.17(2)(b)2. Without the proper orders, the MA program cannot authorize hours for those cares. This relates to the fact that PCW services must be performed according to a written plan of care for the recipient and developed by a registered nurse for purposes of providing necessary and appropriate services. See Wis. Adm. Code §DHS 107.112(3)(b). The plan of care must be based on the registered nurse's visit to the recipient's home and an evaluation of the recipient's condition and record, and a discussion with the physician as to any necessary changes in the plan of care. *Id.*

Additionally, petitioner's knee replacement occurred after the PA was submitted, after the requested start date, and there is no clinical information about it. And while I do not doubt petitioner has limitations, they must be identified and verified so that petitioner's conditions are clear to the agency. I therefore must conclude that the OIG was correct in its denial of the PA request. As in all prior authorization request cases, the petitioner bears the burden of proving the services she requests are necessary, and that has not been done. Her provider may be able to file an amendment to the prior authorization, or a new PA request, correcting the problems and explaining more fully the need for the hours. I suggest that the

petitioner, her provider, and the medical specialists she sees review her PCW needs and that they provide increased documentation to support a new request for additional ongoing PCW time. This is not intended to diminish the challenges petitioner and her family face, but rather to explain that the documentation must be there to support the requested services.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

### **CONCLUSIONS OF LAW**

The OIG correctly denied petitioner's request for PCW hours as the preponderance of the evidence submitted did not show the medical necessity of the services.

**THEREFORE, it is**

**ORDERED**

The petition for review herein be 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 21st day of October, 2014

---

\sKelly Cochrane  
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](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 21, 2014.

Division of Health Care Access and Accountability