



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

In the Matter of

[REDACTED]

DECISION

HMO/158094

PRELIMINARY RECITALS

Pursuant to a petition filed May 29, 2014, under Wis. Stat. § 49.45(5)(a), and Wis. Admin. Code § HA 3.03, to review a decision by the Division of Health Care Access and Accountability in regard to the denial of services under Medical Assistance, a hearing was held on July 29, 2014, at Milwaukee, Wisconsin. A hearing set for June 25, 2014, was rescheduled at the petitioner’s request. At the petitioner’s request, the record was held open for 15 days for the submission of additional information.

The issue for determination is whether the Division of Health Care Access and Accountability, by its agents, correctly denied the petitioner’s prior authorization request from 21 personal care worker service hours per week.

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

Telephone Appearance By: Lucy Miller, R.N., 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:

Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 48 year-old male resident of Milwaukee County. He is certified eligible for MA, and receives covered cares and services from a health maintenance organization (HMO) contracted by the Department known as United Healthcare Community Plan (UHC).

2. The petitioner has hypertension. He reports axial spine discomfort, neck pain, low back pain, left knee pain, and he takes oxycodone for pain. He is in good general health, with some blurred or double vision, chronic rhinitis, swelling of feet, ankles and hands, frequent or recurring headaches. He had a head injury at some point in time and reports numbness, tingling sensations and light headedness or dizziness. He reports memory loss. He has generalized joint pain, joint stiffness, swelling, difficulty walking, muscle pain and/or cramps, back pain, cold extremities, and muscle weakness. He reports sexual difficulty. He uses a cane in the right hand and has his left knee braced. With the brace, he has a slight left circumducted gait. See, Exhibit #3, Attachment #6, Progress Notes of 3/19/14.
3. The petitioner describes his medical conditions as spinal stenosis, status post patellar dislocation with grade 4 chondromalecia, osteoarthritis affecting multiple joints, cervical disc degeneration, chronic pain syndrome, lumbago and Hepatitis B. See, Exhibit #4, p. 2.
4. On a date unknown in April, 2014, a Personal Care Screening Tool was prepared by the provider, Quality Assurance Home Health, and the screener determined that the petitioner requires assistance from a personal care worker, to bathe, dress, groom, toilet and transfer for 3 hours per day. See, Exhibit #4, p. 2. No copy of the Tool report was provided in this record.
5. In April, 2014, the petitioner had arthroscopic surgery of the left knee, consisting of the debridement of a patellofemoral chondromalacia and of a medial meniscal tear. He reports two prior surgeries on this knee on December 13, 2013, and January 25, 2014, with poor results and increasing dysfunction leading to the April, 2014, surgery.
6. The petitioner reports a poorly healed fracture of his middle finger on the right hand, which he reports impedes his ability to grasp objects or have full dexterity of his right hand. See, Exhibit #4, at p. 3. This injury was diagnosed on February 18, 2014, as resulting from a fall on the ice.
7. The petitioner reports an otherwise unspecified learning disability and sleep apnea. See, Exhibit #4, at p. 4.
8. On March 17, 2014, the petitioner reported to an Occupational Therapist (██████████) at Wheaton Franciscan Rehabilitation Services that he has difficulty with opening his mouth and turning his neck because of temporal mandibular joint condition; he was referred for a cervical exam and exercises opening his mouth and turning his neck.
9. A MRI of the petitioner's lumbar spine performed on February 21, 2014, resulted in the radiologic impressions that he has: (1) mild to moderate axial spondyloarthropathy, with multilevel diffuse annular bulging and hypertrophic facet arthrosis; and (2) Mild narrowing of the central canal from L3 to S1, with foraminal encroachment. See Exhibit #3, Attachment #7.
10. The petitioner is independent in most activities. Recent therapy evaluation (February 20, 2014) indicates that his grip strength in his dominant hand is within normal limits, with normal range of motion. He can drive an auto. He does not use adaptive equipment that would assist him like shower chairs, long handled brushes, button hooks, etc. In fact, the petitioner reported that he had difficulty moving large objects (dressers, beds, and boxes weighing 10 – 20 lbs.) and shoveling snow. He also reported difficulty using his right hand when moving lightweight objects. The therapy notes revealed that his active range of motion (AROM) was noted to be within functional limits in his dominant (left) hand. His grip strength was found in his left hand to be 140, and his lateral pinch and palmer pinch strengths were recorded as 27 and 20.6 respectively. Leaving this appointment, the petitioner was noted to ambulate with his cane in his left hand and carrying two to three inch wide folders in his right hand without difficulty. See, Exhibit #3, Attachment #4, at p. 2.
11. In approximately early April, 2014, the petitioner and his home health care provider, Quality Assurance Home Health, of Milwaukee, Wisconsin, made a request to the HMO for coverage

approval for the petitioner of personal care worker (PCW) services of 3 hours per day, every day, ongoing.

12. On May 14, 2014, the HMO sent an assessor to perform a Long Term Care Functional Assessment Report, run by [REDACTED] [REDACTED]. This report found that while the petitioner reported needed various light assistance as generally described in Finding of Fact #4, he in fact did not live alone and did not require personal care worker services for minor assistance, or could perform tasks for himself like buttoning, zipping, dressing and grooming. See, Exhibit #3, Attachment #9.
13. On May 16, 2014, the HMO, by [REDACTED] [REDACTED], M.D., Physician Advisor at UHC, issued a denial letter to the petitioner informing him that no hours of PCW services had been approved because a Health Plan Team had reviewed his case records to look at his needs and determined that he could perform all of his own activities of daily living (known as “ADLs”, in the parlance), i.e., he did not need a PCW to perform for him, or assist him to perform, any such ADLs.
14. On May 29, 2014, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the denial action described in Finding of Fact #4, above.
15. On June 19, 2014, the Department’s Nurse Consultant, [REDACTED] [REDACTED], R.N., reviewed the petitioner’s request, supporting documentation, and the HMO decision on the request, and concurred with the determination of the HMO that personal care worker services were not medically necessary or reimbursable by MA for this petitioner/recipient. See, Exhibit #3, Attachment #4.
16. On June 30, 2014, the petitioner was examined by [REDACTED] [REDACTED], N.P. of Wheaton Franciscan Healthcare. Mr. [REDACTED] found that the petitioner was 5/5 in muscle strength and motor controls in his right and left quadriceps; and his right and left hamstrings. He found the straight leg raises on right and left were negative for abnormalities. He found that the patient’s left knee was normal with full range of motion, and that his right knee had an abnormal extension, pain and crepitus with extension. He noted that the petitioner’s gait was antalgic. Finally, while the petitioner reported taking oxycodone about 4 hours prior for pain, the urine screen taken indicated that the petitioner was negative for oxycodone and positive for alcohol.

DISCUSSION

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.” Wis. Admin. Code §DHS 107.112(1)(a). Covered services include 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(b).

I have reviewed the testimony and the exhibits in this matter carefully. I concur fully with the DHCAA action and rationale for the denial made here, as well as the initial denial decision of the Department's agent, United Healthcare Community Plan. I found the references to upper extremity strength and grasp, back and hamstring lower extremity strength and motor function, and left knee function within normal limits and right knee limited extension to be persuasive that this man can perform most of his activities of daily living. For whatever reason, it seems rather that he prefers to have a personal care worker assist, cook and transport him. I found the notation of his reported difficulty in moving large objects like a dresser or bed, or shoveling snow, to be particularly persuasive as to the petitioner's abilities to perform motor tasks. Likewise, the fact that he has normal dexterity, grasp and strength in his dominant hand and significant pincer and grasp action in his non-dominant hand, persuasive that he can dress and undress and to perform his grooming.

In addition, the supplemental evidence from the petitioner indicated mild-to-moderate spondyloarthropathy at multiple levels, with diffuse bulging and facet arthrosis, and a mild narrowing of the central canal from L3 to S1. These relatively mild to moderate limitations do not bolster his argument that his back condition was such that he required the PCW level of assistance. Rather, his own statements that it was difficult to move big objects like dressers and beds, and to shovel snow, clearly indicates substantial functional ability to perform simple activities of daily living.

Finally, the patient note from Nurse Practitioner [REDACTED] of June 30, 2014, that clearly states that the petitioner said he took his oxycodone four hours prior to the appointment and yet the urine test showed no oxycodone makes it clear to this reviewer that the petitioner was either non-compliant with pain medication or exacerbating his symptoms for the examination.

The DHCAA denial action is affirmed. The petitioner may always submit a new Prior Authorization Request supported by better evidence in the future, and seek to establish that he needs PCW services. The evidence in this record does not show that is the case.

CONCLUSIONS OF LAW

The DHCAA correctly denied the PA request for 21 hours of PCW services per week, as the preponderance of the evidence in the record does not establish these hours are medically necessary.

THEREFORE, it is

ORDERED

That the petition for review herein be, and the same hereby 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 Madison,
Wisconsin, this 11th day of September, 2014

\sKenneth D. Duren, Assistant Administrator
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 11, 2014.

Marinette County Department of Human Services
Division of Health Care Access and Accountability