



FH

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

In the Matter of:

██████████
██████████
██████████

DECISION

MPA/160311

PRELIMINARY RECITALS

Pursuant to a petition filed August 29, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Wisconsin Department of Health Services [“DHS”] Office of the Inspector General [“OIG”] in regard to Medical Assistance [“MA”], a Hearing was held via telephone on October 16, 2014.

The issue for determination is whether OIG was correct to modify Prior Authorization [“PA”] # ██████████ by approving 55.50 hours per week of Personal Care Worker [“PCW”] time instead of the 70 hours per week that was requested.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████
██████████
██████████

Respondent:

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

By: Kelly Townsend, RN, Nurse Consultant (Ms. Townsend did not appear at the October 16, 2014 Hearing but submitted a letter dated September 24, 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 (45 years old) is a resident of Brown County, Wisconsin.
2. Petitioner lives with non-relatives/roommates; at the age of 3 she was diagnosed with Kugelberg-Welander spinal muscular atrophy; her muscular atrophy is progressive in her upper and lower extremities resulting in progressive loss of abilities; she has developed scoliosis and complains of chronic pain; she has weakened pulmonary muscles which causes difficulty breathing (especially when asleep) and an impaired cough reflex; she uses a power wheelchair with footrests, a shower bench, an electric bed, and eats a general diet.
3. On July 17, 2014 petitioner's provider, Brown County Human Services of Green Bay, Wisconsin, filed PA # [REDACTED] dated July 17, 2014 with OIG requesting 280 units (70 hours) per week of PCW services and 96 units (24 hours) per year PRN ("pro re nata" -- i.e. as needed) of PCW time for 53 weeks with a requested start dated of August 2, 2014 at a cost of \$51,230.48.
4. OIG modified P.A. # [REDACTED] by approving 222 units (50.50 hours) per week of PCW time [instead of the 280 units (70 hours) per week that was requested]; OIG approved the 96 units (24 hours) per year PRN PCW time; OIG sent a letter to petitioner dated August 18, 2014 and entitled *BadgerCare Plus Notice of Appeal Rights* informing petitioner of the modification.
6. A *Personal Care Screening Tool* ["PCST"] completed on July 8, 2014 states the following concerning petitioner's Activities of Daily Living ["ADLs"]: BATHING: totally bathed by another person; DRESSING: depends entirely upon another person to dress both upper and lower body; GROOMING: depends entirely upon another person for grooming; EATING: total feeding from another person but at times is able to feed self finger foods; MOBILITY IN HOME: able to move about by herself but requires intermittent supervision or cueing; independent in power wheelchair but at times has difficulty with joy stick; TOILETING: needs physical help from another person to use toilet and/or change personal hygiene product (will use bedpan but requires complete assistance; wears depends daily due to incontinence); TRANSFERRING: needs constant physical help from another person and is unable to participate; non-weight bearing; MEDICATION ASSISTANCE: needs physical help of a PCW (medications are crushed and given on spoon); in addition the PCST states that petitioner requires frequent repositioning for comfort, circulation, and to maintain skin integrity (she also requires assistance with placement and removal of roll for foot drop); the PCST allocated 256 units (64 hours) per week of ADL assistance, and an additional 96 PRN units per year, for petitioner.
7. Based on the *Personal Care Activity Time Allocation Table* ["PCATAC"] OIG allotted the following PCW weekly time for petitioner's cares: 210 minutes (the maximum) for bathing; 280 minutes (double the usual allotted time due to petitioner's physical condition); 210 minutes (the maximum) for grooming; 420 minutes (the maximum) for eating; 630 minutes (the maximum) for toileting; 315 minutes (the maximum) for transfers; 105 minutes for medication assistance; 210 minutes (the maximum) for complex positioning; 280 minutes for Range Of Motion ["ROM"]; 665 minutes for services incidental to tasks (this additional time is equal to ¼ of the time allocated for ADL and Medically Orientated Tasks ["MOT"]); this is a total of 3325 minutes per week which is approximately 55.40 hours; 55.50 hours per week was approved by OIG.

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 a Registered Nurse [“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 she is eligible for the requested services. *Lavine v. Milne*, 424 U.S. 577, 583-584 (1976). Petitioner has failed to do so.

OIG based its determination to grant 55.50 per week (plus 24 PRN hours per year) on its evaluation of the PCST, medical records, and the use of the PCATAC. Petitioner (and her witnesses) testified that more hours were need due to petitioner's condition and the progressive nature of her illness. However, petitioner's testimony (and that of her witness) was general and nature. Petitioner failed to provide any basis upon which to conclude that any specific amount of PCW time was required. OIG's determination was based on PCATAC and is reasonable. In the absence of additional evidence OIG's determination must be affirmed.

Petitioner may, if she wishes, have her provider file another PA request along with additional documentation that supports the specific number of PCW hours that she is requesting.

CONCLUSIONS OF LAW

For the reasons explained above, DCHAA was correct to modify PA # [REDACTED] by approving 55.50 hours per week of PCW time instead of the 70 hours per week that was requested.

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 29th 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 29, 2014.

Division of Health Care Access and Accountability