



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
Redact

DECISION

MPA/160430

PRELIMINARY RECITALS

Pursuant to a petition filed September 03, 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 October 14, 2014, at Milwaukee, Wisconsin. At the request of the parties, the record was held open for two weeks for consecutive closing arguments to the Division of Hearings and Appeals (DHA).

The issue for determination is whether the Division of Hearings and Appeals (DHA) has subject matter jurisdiction regarding the August 26, 2014 denial of personal care worker (PCW) services because petitioner's provider on behalf of petitioner discontinued his PCW services as of September 8, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
[Redacted]
Redact

Respondent:

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

By: [Redacted] 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:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a 51 year old resident of Milwaukee County.

2. The petitioner received MA paid personal care worker (PCW) services as of about January 28, 2012.
3. On January 23, 2014, petitioner's provider, **Redact** submitted to the Department a prior authorization (PA) request on behalf of the petitioner for 30.75 hours of personal care worker (PCW) hours of service plus 7 hours of PCW travel time for petitioner. See Exhibit 2.
4. The Department sent a March 5, 2014 notice to the petitioner stating that his PA request was reduced from 30.75 to 14 hours per week of PCW services, and approved as modified.
5. Petitioner did not appeal that reduction in his approved PCW hours, as stated in Finding of Fact #4 above.
6. On April 5, 2014, OIG nurse auditors visited petitioner's home to ensure that Federal and State Medicaid and BC requirements are met and to evaluate the PA request. The nurse auditors determined preliminarily that petitioner did not require any PCW assistance at that time. See Exhibit 1, Attachment 2.
7. After an OIG investigation, the Department sent an August 26, 2014 notice to the petitioner stating that the January, 2014 PA request was denied effective September 25, 2014, because the submitted PA documentation did not establish that petitioner needed any PCW assistance at that time based upon the lack of medical necessity and appropriateness of the requested PCW services for petitioner. See Exhibit 1, Attachment 3.
8. The petitioner filed a September 2, 2014 appeal of the reduction in his PCW hours which was mailed on September 3, 2014, and received at the Division of Hearings and Appeals (DHA) on September 8, 2014. See Exhibit 1, Attachment 4.
9. The provider, **Redact**, sent a September 9, 2014 Amended PA Request to the Department requesting to discontinue the petitioner's PCW services based upon petitioner's request to end his PCW request for services as of September 8, 2014. See Exhibit 1, Attachment 5.
10. In OIG's written denial summaries of September 19, 2014 and October 16, 2014, OIG nurse consultant **Reda Redact** asserted correctly that the Division of Hearings and Appeals (DHA) has no jurisdiction in this September 3, 2014 appeal as petitioner's provider, **Redact**, in its September 9, 2014 Amended PA Request to the Department requested to discontinue the petitioner's PCW services based upon petitioner's request to end his PCW request for services as of September 8, 2014. See Exhibit 1, Attachment 5.
11. There is no reliable evidence in the hearing record that petitioner has retained a new PCW provider, or that any such new PCW provider has submitted to the Department a new PA request for PCW services for the petitioner.

DISCUSSION

During the October 14, 2014 hearing, both the petitioner and OIG consultant **Reda Redact** appeared and testified. The hearing was procedurally complicated and confusing, as indicated by the above Findings of Fact. As a result, the parties submitted to DHA consecutive closing arguments with attached documented to clarify the hearing record, and provide supplemental evidence to determine whether DHA does or does not have jurisdiction in this case. Ms. **Redact** timely submitted to DHA and petitioner a detailed, closing arguments with attachments which is received into the hearing record. The petitioner submitted a handwritten statement which did not address at all the jurisdictional question, but only made allegations regarding petitioner's medical need for PCW services.

In reviewing the hearing record, it is clear that the petitioner's provider discontinued the petitioner's PA request for continued PCW services as of September 8, 2014. See Finding of Fact #9 above. During the October 14, 2014 hearing, petitioner did not dispute such September 8, 2014 discontinuance by his provider at his instructions. Petitioner also did not dispute that he filed a September 2, 2014 appeal of the reduction in his PCW hours which was mailed on September 3, 2014, and received at the Division of Hearings and Appeals (DHA) on September 8, 2014. OIG established with reliable testimony and evidence that DHA has no jurisdiction over whether OIG correctly discontinued petitioner's PCW services in its August 26, 2014 notice, because petitioner (through his provider) discontinued his request for PCW services effective September 8, 2014 (prior to the September 25, 2014 discontinuance effective date), and thus the issue is moot. Finally, there is no reliable evidence in the hearing record that petitioner retained a new PCW provider, and that such possible provider submitted a new and complete PA request on behalf of the petitioner to the Department for continued PCW services for petitioner. See Findings of Fact #8 -#11 above. Accordingly, based upon the above, I conclude that the Division of Hearings and Appeals (DHA) has no subject matter jurisdiction regarding the August 26, 2014 denial of personal care worker (PCW) services because petitioner's provider on behalf of petitioner discontinued his PCW services as of September 8, 2014, and thus the issue is moot.

As dicta, if the petitioner wants to receive PCW services in the future, his new PCW provider must submit to the Department a new PA request on behalf of petitioner for PCW services for the petitioner.

CONCLUSIONS OF LAW

The Division of Hearings and Appeals (DHA) has no subject matter jurisdiction in the instant appeal regarding the August 26, 2014 denial of personal care worker (PCW) services because petitioner's provider on behalf of petitioner discontinued his PCW services as of September 8, 2014, and thus the issue is moot.

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 5th day of December, 2014

\sGary M. Wolkstein
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
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on December 5, 2014.

Division of Health Care Access and Accountability