



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

Redacted case name

DECISION

MPA/160946

PRELIMINARY RECITALS

Pursuant to a petition filed September 30, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Office of the Inspector General ["OIG"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on November 26, 2014. A Hearing scheduled for October 28, 2014 was rescheduled.

The issue for determination is whether OIG was correct to modify Prior Authorization ["PA"] # Redacted by approving only 6.5 hours per week of Personal Care Worker ["PCW"] time instead of the 15.75 hours per week [and 24 hours per year of PCW PRN ("pro re nata" -- i.e. as needed) time] that was requested.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

Redacted petitioner name

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 November 26, 2014 Hearing but submitted a letter dated November 18, 2014 with attachments.)

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [Redact]; 48 years old) is a resident of Milwaukee County, Wisconsin.
2. Petitioner lives with others; he has diagnosis of severe chronic back pain with radiation (secondary to cervical spine fracture), asthma, and allergic rhinitis; on December 1, 2013 he suffered 2 gunshot wounds (1 to the right thigh & 1 to the right foot); his gunshot wounds have healed but as a result he now uses a walking boot, crutch, and/or cane; he uses a reacher to pick up items off the floor (although he is also able to squat to do so); he has functional limitations with ambulation and endurance.
3. On July 18, 2014 petitioner's provider, Community Home Health Care, Inc. of Milwaukee, Wisconsin, filed PA # [Redact] dated July 18, 2014 with OIG requesting 63 units (15.75 hours) per week of PCW services, 96 units (24 hours) per year PRN PCW time, and 28 units (7 hours) per week PCW travel time for 1 year with a requested start dated of July 8, 2014 at a cost of \$23,694.50.
4. OIG modified P.A. # [Redact] by approving 26 units (6.5 hours) per week of PCW time and no (zero) PCW PRN time; OIG sent a letter to petitioner dated September 19, 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: partial physical assistance of another person; DRESSING: dress both upper and lower body without assistance if clothing is laid out or handed to him; GROOMING: partial physical assistance of another person; EATING: no PCW assistance needed; MOBILITY IN HOME: no PCW assistance needed; TOILETING: no PCW assistance needed; (petitioner is not incontinent); TRANSFERRING: needs physical help from another person but is able to participate; MEDICATION ASSISTANCE: needs reminders; the PCST allocated 53 units (13.25 hours) per week of ADL assistance, and no (zero) PRN units, for petitioner.
7. Physician and Physical Therapy ["PT"] documentation show that petitioner is capable of transferring without assistance.
8. There is no documentation in the record of this matter that shows that PCW PRN time is necessary.
9. 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; 105 minutes (the maximum) for grooming; 79 minutes for services incidental to tasks; this is a total of 394 minutes per week which is approximately 6.5 hours; 6.5 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 he 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 only 6.5 hours per week on its evaluation of the PCST, medical records, and the use of the PCATAC. Petitioner offered no evidence other than his own testimony. He testified that he needed more PCW hours to help him get dressed and to help around the house. Petitioner's testimony was general in 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 he wishes, have his provider file another PA request along with additional documentation that supports the specific number of PCW hours that he is requesting.

CONCLUSIONS OF LAW

For the reasons explained above, DCHAA was correct to modify PA # Redact by approving only 6.5 hours per week of PCW time instead of the 15.75 hours per week (and 24 hours per year of PCW PRN time) 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 18th day of December, 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 December 18, 2014.

Division of Health Care Access and Accountability