



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

MPA/161204

PRELIMINARY RECITALS

Pursuant to a petition filed October 9, 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 30, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the Department, by its agents, correctly denied the petitioner's Prior Authorization Request for the coverage of 14 hours per week of personal care worker services.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact

Respondent:

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

Written Appearance By: Robert Derendinger, 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 (CARES # Redact) is a 66 year old male resident of Milwaukee County. He lives with at least one other adult household member.
2. The petitioner has a history of kidney failure, with related dialysis three times per week; hypertension; a benign enlarged prostate; and hyperlipidemia. His only noted functional

limitation is generalized endurance. He does not use any durable medical equipment in his home, and his activity level is described as “up as tolerated”.

3. On or about June 17, 2014, the petitioner’s service provider, [Redact] agency employee [Redact], R.N., performed an assessment and executed the Department’s requisite form, known as a Personal Care Screening Tool, and determined that the petitioner requires 13.75 hours per week of Personal Care Worker (PCW) services, plus 24 hours per year, *pro re nata*, to assist him with getting in and out of the tub; laying out clothes for dressing and assisting with dressing and undressing the lower portion of his body due to weakness from dialysis, including donning shoes and socks; assistance with shaving and grooming three days per week due to weakness from dialysis (i.e., on the days he has dialysis); assistance with meal preparation and set up, ambulating, and transferring, all on the days of dialysis. The Nurse assessing also found he needs medication reminders. He does not require assistance toileting. See, Exhibit#1, Attachment #6.
4. There are no noted restrictions of range of motion, or function in any extremity. The petitioner has not noted cognitive or neurological limitations in this record. He does not utilize any durable medical equipment or adaptive equipment to perform activities of daily living like bathing, ambulating or transferring, or during medical visits or transport.
5. On or about July 24, 2014, the petitioner’s service provider filed a Prior Authorization Request with the Division of Health Care Access and Accountability requesting coverage of a Personal Care Worker regimen of 105 minutes per day, 7 days per week, from 10-11:45 A.M., i.e., 14 hours per week. See, Exhibit #1, attachment #5. The plan proposes that [Redact], a woman that lives in the home and friend of the petitioner’s, will provide these cares as a PCW contracted to [Redact] agency.
6. On August 26, 2014, the Division of Health Care Access and Accountability issued a letter notice to the petitioner informing him that his Prior Authorization Request for coverage of PCW service reimbursement was denied as not medically necessary.
7. On October 9, 2014, the petitioner filed an appeal with the Division of Hearings & Appeals, contesting the denial of his Prior Authorization Request.

DISCUSSION

This appeal was postmarked on October 9, 2014. This means it was timely filed under law and DHA rules on the 44th day after the denial letter of August 26, 2014. See, Wis. Stat. § 49.45(5); and see, Wis. Admin. Code §HA 3.05(3)(c).

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).

Personal care workers can spend no more than one-third of their time performing housekeeping activities. Like all medical assistance services, PCW services must be medically necessary and cost effective. Wis. Admin. Code, §§DHS 017.112(3), 107.02(3)(e)1 and 3.

To determine the appropriate amount of PCW hours a person needs, consistent with care in the PCW community statewide and throughout the MA reimbursement system, providers and the DHCAA use the Personal Care Screening Tool (PCST). This is an assessment tool meant to consistently determine the number of hours required by each recipient, as performed by a nurse screener. The screening tool allots a specific amount of time in each area the recipient requires help, which the DHCAA's reviewer can then adjust to account for variables missing from the screening tool's calculations.

The sole reason for denying the requested hours had to do with the submission of insufficient documentation of the medical necessity of the services sought here. See, Exhibit #1, pp. 4-8. The PCST noted that petitioner essentially requires possible assistance due to generalized weakness on days on which he receives dialysis. And yet, the request is for *daily* assistance, 7 days per week. Findings of Fact #2, #3 and #4, above, essentially capture the essence of the assistance required that was reported in the screening tool. It is restated by the Department's Nurse Consultant in narrative fashion in Exhibit #1, at pp. 4-5. In addition, the petitioner is not documented to have *any* behaviors or medical conditions that interfere with PCW assistance or that present unique challenges that would require more time to complete any cares. In addition, the medical examination reports in this record demonstrate that the petitioner denied on three occasions, (December 16, 2013; March 25, 2014; and May 8, 2014) that he had any symptoms of weakness, shortness of breath, neck or muscle pain, or any limitations of range of motion. See, Exhibit #1, Attachments #7, #8 & #9. Finally, on follow up from discharge from a hospitalization in late May, 2014, for kidney failure and hyperkalemia (high potassium levels) he reported feeling weak and fatigued, but again denied shortness of breath, muscle pain or any other symptoms; he was alert, oriented and not in acute distress; cardiovascular exam demonstrated a regular rate and rhythm; musculoskeletal examination revealed normal range of motion and strength without swelling or deformity; and a neurologic exam did not reveal any focal deficits. See, Exhibit 1, at p. 5; and at Attachment #10.

Based upon the record in this case, I conclude that the Nurse Consultant has correctly determined that the requested PCW services are not, at this time, medically necessary. Rather, the petitioner would be well-advised to contact his county's Aging and Disability Resource Center to seek alternative care options for supportive home care services. Most of the assistance his record describes as being needed by him are not properly personal care worker services that are covered by Medical Assistance. Rather, they primarily are supportive home care services that the petitioner needs when he is too weak to do so himself because of his new dialysis regimen. Fee-for-service PCW services are not intended to provide such support home care services as a primary need. Rather, only 1/3 of the time of such services can be for supportive home care services. Here, there is not a significant and regular need for PCW level services for the petitioner to perform ADLs on a daily basis. And this is particularly so on the 4 days per week when dialysis is not received.

The petitioner may of course submit a new PA Request at any time that supports the level of services sought in a new Request, as supported by clinical documentation of the actual medical necessity of every hour requested for every day it is requested. Under these facts, the appeal must be dismissed.

CONCLUSIONS OF LAW

That the Department has correctly denied the petitioner's PA Request for 14 hours per week of Personal Care Worker services, due to insufficient documentation of the level of services requested.

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 16th day of December, 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 December 16, 2014.

Division of Health Care Access and Accountability