



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

Redact
Redact
Redact

DECISION

MPA/161841

PRELIMINARY RECITALS

Pursuant to a petition filed November 7, 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.

The issue for determination is whether OIG was correct to modify Prior Authorization ["PA"] # Redact by approving only 10.75 hours per week of Personal Care Worker ["PCW"] time instead of the 37 hours per week that was requested.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact (not present at November 26, 2014 Hearing)
Redact
Redact

Represented by:

Redact petitioner's mother
Redact

Respondent:

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

BY: Redact, RN, BSN, Nurse Consultant (Mr. Redact did not appear at the November 26, 2014 Hearing but submitted a letter dated November 19, 2014 with attachments.)

Office of the Inspector General
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 (15 years old) is a resident of Milwaukee County, Wisconsin.
2. Petitioner lives with his family; he has diagnosis of neuroblastoma stage IV, asthma, cyst on lings, single functioning kidney, incontinence, and, hearing loss, and behavioral problems; he had a bone marrow/stem cell transplant in November 2004 and uses hearing aids (both ears); he has functional limitations with bowel/bladder, hearing, endurance, and ambulation. Attachment #2.
3. On August 27, 2014 petitioner's provider, [REDACTED] [REDACTED] [REDACTED] of Prairie Du Chien, Wisconsin, filed PA # [REDACTED] dated August 27, 2014 with OIG requesting 148 units (37 hours) per week of PCW services and 96 units (24 hours) per year PRN ("pro re nata" -- i.e. as needed) PCW time all for 53 weeks with a requested start dated of September 16, 2014 at a total cost of \$32,752.50. Attachment #1.
4. OIG modified PA # [REDACTED] by approving 43 units (10.75 hours) per week of PCW time instead of the 148 units (37 hours) per week that was requested; OIG also approved the 96 units (24 hours) per year of PRN PCW time that was requested; OIG sent a letter to petitioner dated September 29, 2014 and entitled *BadgerCare Plus Notice of Appeal Rights* informing petitioner of the modification.
5. Petitioner attends school 5 days per week (Monday thru Friday) from 7:30 A.M. tom 3:00 P.M. Attachment #3
6. A *Personal Care Screening Tool* ["PCST"] completed on July 15, 2014 states the following concerning petitioner's Activities of Daily Living ["ADLs"]: BATHING: partial physical assistance of another person (he will not complete washing); DRESSING: dresses both upper and lower body but requires intermittent supervision or cueing; needs assistance to place hearing aids in ears; GROOMING: needs physical assistance (teeth brushing 3 times per day); EATING: feeds self with adaptive equipment; MOBILITY IN HOME: needs physical help (total assist to get up and into bathroom; as day goes by he is much more independent; frequent falls); TOILETING: needs physical help for incontinence care (wears incontinence pads during day and needs assist to change pads and clean self); TRANSFERRING: transfers self but requires intermittent supervision or cueing (needs assist in morning but as days goes on he is independent); MEDICATION ASSISTANCE: needs physical help of another person (his mother does meds); PROGRAM: Range Of Motion ["ROM"] in morning due to stiffness; BEHAVIORS: will refuse to get up in the morning and refuse cares; the PCST allocated 95 units (23.75 hours) per week of ADL assistance, and 96 (24 hours) per year PRN units, for petitioner. Attachments #2 & #4.
7. A Milwaukee Public Schools ["MPS"] § 504 Evaluation Meeting document dated November 2013 notes the following with regard to petitioner: he does not qualify for Special Education Services or an accommodation plan; he is seen as a very smart and capable student but is spending time socializing with his peers instead of paying attention in class; he is often seated in front of the classroom but has also sat in other areas of the room and appears to be adequately hearing, he does not wear his hearing aids independently and will often need remainders to get them out of his locker, pocket, etc.; and, he is encouraged to pursue acting/drama and sport, but may not be able to run for long periods of time. Attachment #5.

8. A Children's Long Terms Supports ["CLTS"] Functional Screen report for petitioner completed following a home visit in April 2014 found that: he does not exhibit disruptive behavior in structured settings on a daily basis that require redirection from an adult at a frequency of every 3 minutes or more that has been demonstrated consistently for the past 6 months; he does not have behavioral concerns at this time; he needs help getting in and out of the bath tub or shower; he needs step-by step cueing to complete grooming tasks; he does not need help with dressing, eating (although mother reports that he must be monitored or he eats too much, too fast), mobility, or transferring; mother reports that he is incontinent but does usually recognize when he is going to have a bowel movement during the day and can usually get to the bathroom but she must assist with cleaning afterwards; he appears to walk well within the home but mother reports that he sometimes needs assistance with stairs. Attachment #6.
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; 70 minutes for grooming; 240 minutes for toileting/incontinence; 130 minutes for services incidental to tasks; this is a total of 650 minutes per week which is approximately 10.75 hours; 10.75 hours per week was approved by OIG (in addition to 24 hours per year of PRN PCW time). Attachments #7, #8, #10 & #11.

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).

Paid PCW time is provided for supervision only if the PCW will physically intervene to ensure the member performs the activity safely. Watching a member execute a task by him/herself without physical intervention is not reimbursable. *Personal Care Screening Tool (PCST) Completion Instructions* [F-11133A (07/12)] [“PCST Instructions”], page 2; Attachment #8. In addition, care of hearing aids is a covered task, but not assistance with placement or removal. *BadgerCare Plus and Medicaid Handbook: Personal Care*, Topic #2477; PCST Instructions page 6 (Element 21); Attachments #8 & #9. Finally, ROM that is not part of a prescribed therapy program should be able to be completed during routine ADL. If ROM is unable to be completed during routine ADL the documentation must include information as to why. PCST Instructions page 13; Attachment #8.

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 10.75 hours per week on its evaluation of the PCST, the MPS records, the CLTS Functional Screen, medical records, and the use of the PCATAC. Petitioner offered no evidence other than the testimony of his mother. His mother testified that petitioner has bad kidney problems, problems in the mornings when he gets up, that when he eats he must go to the bathroom right away and sometimes does not know it, that he has problems with his mouth and must floss every morning and after every meal, and that he needs ROM in the morning and cannot be rushed. The testimony was general in nature and failed to provide any basis upon which to conclude that any specific amount of PCW time was required. Additionally, some evidence in the record of this matter suggests that petitioner’s not wearing his hearing aids and not getting up in the morning is matter of choice, not ability.

Further, it is noted that the PCST, the MPS records, the CLTS Functional Screen, and the medical records in this matter are not entirely consistent. For instance, the PCST states that petitioner needs physical help with mobility but her MPS records states that petitioner is encouraged to pursue sport (but may not be able to run for long periods of time) and the CLTS Functional Screen states that he appears to walk well within the home but mother reports that he sometimes needs assistance with stairs.

Based on the evidence in the record of this matter, OIG’s determination will be upheld. 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 clarifies his abilities and supports the specific number of PCW hours that he is requesting.

CONCLUSIONS OF LAW

For the reasons explained above, OIG was correct to modify PA # Redact by approving only 10.75 hours per week of PCW time instead of the 37 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 December, 2014

\sSean P. Maloney
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 29, 2014.

Division of Health Care Access and Accountability